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Civil Rights and Compliance Review Training Manual

FmHA

AD-33 Bookplate
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I. AGENDA



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ADMINISTRATOR

DIRECTOR, EQUAL OPPORTUNITY STAFF

WILLIAM S. TRUE

EQUAL OPPORTUNITY (PROGRAM)

CIVIL RIGHTS COMPLIANCE TRAINING

LOW DISCRIMINATION COMPLAINTS

LOW PROGRAM MINORITY PARTICIPATION

LOW PROGRAM INSTRUCTIONS

EQUAL OPPORTUNITY (EMPLOYMENT)

WALTER DENT - EEO COORDINATOR

EEO TRAINING

EEO COMPLAINTS

FEDERAL WOMEN'S PROGRAM

HISPANIC EMPLOYMENT PROGRAM

MINORITY RECRUITMENT ASSISTANCE

EEO PROGRAM REQUIREMENTS

- . SUFFICIENT BUDGET
- . WRITTEN EEO POLICY TO ALL EMPLOYEES
- . AFFIRMATIVE GOALS
- . UPWARD MOBILITY PROGRAM
- . HEP AND FWP MANAGERS
- . EEO COUNSELORS
- . EEO POSTERS
- . EEO STATEMENT IN POSITION DESCRIPTION
- . EEO ADVISORY COMMITTEE
- . 1165 EMPLOYEES TAKING COURSES AT AGENCY EXPENSE

III. ECOA



CLASS OUTLINE

EQUAL CREDIT OPPORTUNITY ACT

I. INTRODUCTION AND OBJECTIVES

II. DEFINITIONS

- A.. ADVERSE ACTION
- B. COMPLETED APPLICATION
- C. CREDIT TRANSACTION
- D. PUBLIC ASSISTANCE PROGRAM

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V. RACE, COLOR, RELIGION AND NATIONAL ORIGIN PROHIBITED BASIS

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VIII. HOW ECOA PROHIBITS AGE DISCRIMINATION

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XIIII. ACTIVITIES

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- B. QUESTION AND ANSWER PERIOD



EQUAL CREDIT OPPORTUNITY ACT (ECOA)

FmHA SHALL NOT DISCRIMINATE AGAINST AN APPLICANT ON A PROHIBITED BASIS REGARDING ANY ASPECT OF A CREDIT TRANSACTION.

PROHIBITED BASIS

1. RACE
2. COLOR
3. RELIGION
4. NATIONAL ORIGIN
5. SEX
6. MARITAL STATUS
7. AGE (MUST HAVE CAPACITY TO ENTER INTO A BINDING CONTRACT)
8. INCOME FROM PUBLIC ASSISTANCE
9. EXERCISED RIGHT UNDER CONSUMER PROTECTION ACT

- 21
1. HOW THE ACT PROHIBITS DISCRIMINATION ON
A PROHIBITED BASIS
 - A. PROHIBITS DISCOURAGING APPLICANTS BY ORAL
OR WRITTEN STATEMENTS
 - B. PROHIBITS CONSIDERING ANY PROHIBITED
BASIS FOR EVALUATING APPLICATIONS
 - C. PROHIBITS REFUSING TO GRANT AN INDIVIDUAL
ACCOUNT TO A CREDITWORTHY APPLICANT

SPECIAL PURPOSE CREDIT PROGRAMS

MOST OF FmHA PROGRAMS QUALIFY AS SPECIAL PURPOSE CREDIT ASSISTANCE PROGRAMS, AND, AS SUCH, FmHA MAY REQUEST OF AN APPLICANT AND MAY CONSIDER, IN DETERMINING ELIGIBILITY FOR SUCH PROGRAM, INFORMATION REGARDING AN APPLICANT'S MARITAL STATUS, INCOME FROM ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE, AND THE SPOUSE'S FINANCIAL RESOURCES. AFTER ELIGIBILITY HAS BEEN DETERMINED, FmHA SHOULD PROCEED ACCORDING TO EQUAL CREDIT OPPORTUNITY ACT REGULATIONS.

(B&I GUARANTEED PROGRAM DOES NOT QUALIFY AS A SPECIAL PURPOSE CREDIT PROGRAM.)

RACE, COLOR, RELIGION, AND NATIONAL ORIGIN

THE ECOA PROHIBITS CONSIDERING IN ANY MANNER, THE RACE, COLOR, RELIGION, OR NATIONAL ORIGIN OF A CREDIT APPLICANT IN ANY SYSTEM OF EVALUATING CREDITWORTHINESS.

EXCEPT:

1. A CREDITOR MAY REQUEST THE RACE OR NATIONAL ORIGIN OF AN APPLICANT FOR MONITORING AND STATISTICAL PURPOSES ONLY.
2. A CREDITOR MAY INQUIRE ABOUT THE IMMIGRATION STATUS OR PERMANENT RESIDENCE OF AN APPLICANT WHEN EVALUATING AN APPLICATION.

HOW ECOA PROHIBITS SEX DISCRIMINATION

- A. PROHIBITS REQUESTING THE SEX OR AN APPLICANT, EXCEPT FOR MONITORING AND STATISTICAL PURPOSES.
- B. PROHIBITS REQUESTING INFORMATION ABOUT BIRTH CONTROL PRACTICES, CHILD-REARING CAPABILITIES OR INTENTIONS.
- C. PROHIBITS CONSIDERING ASSUMPTIONS OR AGGREGATE STATISTICS THAT ANY GROUP OF PERSONS WILL BEAR OR REAR CHILDREN, AND WILL RECEIVE DIMINISHED OR INTERRUPTED INCOME.
- D. PROHIBITS A CREDITOR FROM PROHIBITING AN APPLICANT FROM OPENING OR MAINTAINING AN ACCOUNT AS FOLLOWS:
 - (1) BIRTH GIVEN FIRST NAME AND SURNAME
 - (2) BIRTH GIVEN FIRST NAME AND SPOUSE'S SURNAME
 - (3) BIRTH GIVEN FIRST NAME AND A COMBINED SURNAME

HOW ECOA PROHIBITS MARITAL STATUS DISCRIMINATION

A. PROHIBITS REQUESTING INFORMATION ABOUT A SPOUSE OR FORMER SPOUSE.

EXCEPT

- (1) IF SPOUSE WILL BE CONTRACTUALLY LIABLE
(JOINT ACCOUNT)
- (2) IF APPLICANT IS RELYING ON SPOUSE'S INCOME TO REPAY THE DEBT OR
RECEIPT OF THAT INCOME WILL BE CONSIDERED FOR ELIGIBILITY.
- (3) IF APPLICANT RESIDES IN A COMMUNITY PROPERTY STATE (CHECK STATE
PROPERTY LAWS)
- (4) IF APPLICANT IS USING PROPERTY IN A COMMUNITY PROPERTY STATE AS A
BASIS FOR REPAYMENT
- (5) IF APPLICANT IS RELYING ON ALIMONY, CHILD SUPPORT, OR SEPARATE
MAINTENANCE PAYMENTS TO REPAY DEBT

HOW ECOA PROHIBITS MARITAL STATUS DISCRIMINATION

- A. MARITAL STATUS MAY BE REQUESTED ONLY IN TERMS "MARRIED", "UNMARRIED", AND "SEPARATED".
- B. FOR DETERMINING ELIGIBILITY ONLY, FmHA MAY INQUIRE WHETHER ANY STATED INCOME IS DERIVED FROM ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE.
- C. ON REQUEST OF AN APPLICANT, FmHA MAY CONSIDER AN ACCOUNT REPORTED IN THE NAME OF A SPOUSE OR FORMER SPOUSE WHICH CAN BE DEMONSTRATIVE OF THE APPLICANT'S CREDITWORTHINESS.
- D. FmHA MAY NOT REQUIRE THE SIGNATURE OF AN APPLICANT'S SPOUSE OR OTHER PERSON ON ANY CREDIT INSTRUMENT, IF THE APPLICANT IS CREDITWORTHY FOR THE AMOUNT AND TERMS OF THE CREDIT REQUESTED.

EXCEPT

- (1) SIGNATURE OF SPOUSE OR OTHER PERSON MAY BE REQUIRED BY STATE PROPERTY LAWS ON ANY INSTRUMENT TO CREATE A VALID LIEN, PASS CLEAR TITLE OR WAIVE INCHOATE RIGHTS FOR SECURED PROPERTY.

HOW ECOA PROHIBITS AGE DISCRIMINATION

- A. PERMITS REQUESTING INFORMATION ON THE NUMBER AND AGES
OF THE APPLICANT'S DEPENDENTS OR DEPENDENT RELATED FINANCIAL
OBLIGATIONS.
- (1) THE REQUESTED INFORMATION MAY NOT INCLUDE ANY OF THE
OTHER PROHIBITED CRITERIA.
- B. THE AGE OF THE APPLICANT MAY NOT BE CONSIDERED IF THE APPLICANT
HAS THE CAPACITY TO ENTER INTO A BINDING CONTRACT.
- EXCEPT
- (1) WHERE AGE OF THE APPLICANT IS USED TO FAVOR THE APPLICANT
(SEC. 504 RH GRANTS)

HOW ECOA REGULATIONS APPLY TO INCOME

- A. FmHA MAY INQUIRE INTO THE POSSIBLE CONTINUITY OF ANY INCOME, AND MAY CONSIDER ANY INCOME TO THE EXTENT THAT IT IS LIKELY TO BE CONSIDERED.
- B. PUBLIC ASSISTANCE INCOME MAY NOT BE USED AS A BASIS FOR DISCRIMINATION, BUT MAY BE CONSIDERED IN DETERMINING ELIGIBILITY AND CREDITWORTHINESS.
- C. INCOME MAY NOT BE DISCOUNTED BECAUSE IT IS
 - (1) DERIVED FROM PART-TIME EMPLOYMENT
 - (2) DERIVED FROM AN ANNUITY, PENSION OR OTHER RETIREMENT BENEFIT.
 - (3) DERIVED FROM ALIMONY, CHILD SUPPORT OR SEPARATE MAINTENANCE PAYMENTS.

DETERMINING CREDITWORTHINESS

- A. A LISTING OF ALL ACCOUNTS FOR WHICH THE APPLICANT IS LIABLE MAY BE REQUESTED, INCLUDING NAMES AND ADDRESSES OF CREDITORS.
- B. ANY INFORMATION THAT IS OBTAINED FOR THE EVALUATION OF CREDIT MAY BE CONSIDERED, BUT MAY NOT BE USED TO DISCRIMINATE ON A PROHIBITED BASIS.
- C. CONSIDERATION MAY BE GIVEN TO ACCOUNTS THAT THE APPLICANT AND SPOUSE ARE PERMITTED TO USE, AND FOR WHICH BOTH ARE CONTRACTUALLY LIABLE.
- D. CONSIDERATION SHALL BE GIVEN TO INFORMATION PRESENTED BY THE APPLICANT TENDING TO INDICATE THAT THE CREDIT HISTORY BEING CONSIDERED BY FmHA DOES NOT ACCURATELY REFLECT THE APPLICANT'S CREDITWORTHINESS.
- E. CONSIDERATION MAY BE GIVEN TO STATE PROPERTY LAWS DIRECTLY OR INDIRECTLY AFFECTING CREDITWORTHINESS.
 - (1) THIS INCLUDES REQUIRING THE SIGNATURE OF A SPOUSE OR OTHER PERSON ON ANY NECESSARY CREDIT INSTRUMENTS FOR SECURED CREDIT.
- F. INCOME MAY BE CONSIDERED TO THE EXTENT THAT IT IS LIKELY TO BE CONTINUED TO ESTABLISH CREDITWORTHINESS.

FmHA Instruction 1910-A, Sec. 1910.5

(b) Credit history. Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) Creditworthiness. When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history.

(1) Bankruptcies, foreclosures, judgments, or delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

NOTIFICATIONS

- A. WITHIN 30 DAYS OF RECEIPT OF A COMPLETED APPLICATION, FmHA
MUST NOTIFY APPLICANT OF ACTION TAKEN
- (1) DETERMINATION OF ELIGIBILITY
 - (2) ADVERSE ACTION

NOTIFICATION

NOTICE OF ADVERSE ACTION MUST

- (1) BE IN WRITING
- (2) CONTAIN STATEMENT OF ACTION TAKEN
- (3) STATEMENT OF SPECIFIC REASONS FOR THE ACTIONS TAKEN
- (4) CONTAIN FmHA APPEAL RIGHTS
- (5) CONTAIN ECOA NOTICE

ECOA NOTICE

"The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580."

NOTIFICATIONS

THE ECOA NOTICE WILL BE CONTAINED IN LETTERS NOTIFYING THE APPLICANT
OF THE FOLLOWING TYPES OF ADVERSE ACTION:

- (1) REJECTED APPLICATION
- (2) WITHDRAWN APPLICATION
- (3) WHERE ELIGIBILITY CANNOT BE DETERMINED WITHIN 30 DAYS

RECORD RETENTION

- A. FmHA COUNTY AND DISTRICT OFFICES MUST RETAIN THE FOLLOWING INFORMATION FOR 25 MONTHS AFTER NOTIFICATION OF ACTION ON AN APPLICATION
1. ANY WRITTEN OR RECORDED INFORMATION USED IN EVALUATING THE APPLICATION; OR CONCERNING ADVERSE ACTION.
 2. COPY OF NOTIFICATION OF ACTIONS TAKEN
 3. COPY OF STATEMENT OF SPECIFIC REASONS FOR ADVERSE ACTIONS.
 4. COPY OF WRITTEN STATEMENT SUBMITTED BY THE APPLICANT ALLEGING A VIOLATION.
 5. IF UNDER INVESTIGATION FOR AN ALLEGED VIOLATION, ALL PERTINENT INFORMATION MUST BE RETAINED UNTIL FINAL DISPOSITION OF THE MATTER.

RECORD RETENTION

- A. FmHA COUNTY AND DISTRICT OFFICES MAY NOT RETAIN INFORMATION PROHIBITED BY ECOA IN ITS FILES.

EXCEPT FOR THE FOLLOWING:

1. CREDIT REPORTS
2. INFORMATION OBTAINED FROM THE APPLICANT OR OTHERS WITHOUT THE SPECIFIC REQUEST FROM FmHA.
3. MONITORING INFORMATION ON RACE/NATIONAL ORIGIN AND SEX OF THE APPLICANT.

FmHA MONITORING PROGRAM

Agreement
Between
the Federal Trade Commission
and
Farmers Home Administration,
Department of Agriculture

I. Background and Purpose

This agreement between the Federal Trade Commission (Commission) and the Farmers Home Administration (FmHA), U.S. Department of Agriculture, is made pursuant to Sections 202.13(d) and 202.5(b)(2) of Federal Reserve Board Regulation B (12 CFR 202) which implements Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.). Section 202.13(d) provides for substitute monitoring programs if required by an agency charged with the administrative enforcement under Section 704 of Title VII. Section 202.15(b)(2) allows a creditor to obtain otherwise prohibited information, such as the race and sex of an applicant, if required by an agreement entered into with an enforcement agency. This agreement constitutes a substitute monitoring program which replaces the requirements of Sections 202.13(a), (b), and (c) of Regulation B.

Under Section 704(c) of Title VII, administrative enforcement over requirements imposed on the Farmers Home Administration by this title was committed to the Federal Trade Commission. This agreement sets forth a monitoring program under which the Farmers Home Administration is required by the Federal Trade Commission to obtain the race and sex of applicants for FmHA loans. With this information Farmers Home will be more readily able to detect patterns or practices of discriminatory lending, and to better plan their loan program activity.

II. Description of Monitoring Program

A. Procedure

(1) Information to be requested

- (a) Each FmHA field office, receiving an application for a loan listed under

paragraph II B below, shall request, but not require, on an application form or separate document the following information regarding the applicant and joint applicant (if any):

- (i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic Origin; White, not of Hispanic Origin; Hispanic; Other (specify); and
 - (ii) sex
- (b) No FmHA employee shall engage in activity which discourages an applicant from providing the monitoring information in subparagraph A(1)(a). FmHA shall attempt to collect the monitoring information during the initial contact with the applicant(s). If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the monitoring section of the application form or separate document, and FmHA field office personnel shall to the extent possible, on the basis of visual observation or surnames, designate race/national origin and sex of each loan applicant and any joint applicant.

When FmHA field office personnel designate the race/national origin of an applicant, they shall do so by choosing one of the five specific categories of race/national origin listed above, and shall not use the "Other (specify)" category to designate race/national origin.

- (c) Where the loan applicant is an association or organization, the race/national origin and sex of the majority of its members will be requested on the application form or separate document, and if not provided, will be determined to the extent possible by FmHA.

(2) Disclosure Notice

- (a) The following disclosure shall appear in the monitoring section of the application form or separate document immediately above the request for monitoring information:

"The following information is requested by the Federal Government in order to monitor FmHA's compliance with Federal laws prohibiting discrimination against loan applicants on the bases of race, national origin, and sex. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, FmHA is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

- (b) In addition to the disclosure set forth in subparagraph (a) above, the following disclosure shall appear in the monitoring section of the application or separate document used in connection with loan programs under which applications may be made by associations, organizations, or other business entities:

"If the applicant(s) for this loan is an association or organization, the monitoring information is requested concerning the majority of its members. If you choose not to furnish it, FmHA is required to determine and note it, where possible."

B. Coverage

Under this monitoring program the Farmers Home Administration is required to obtain the race/national origin, and sex of loan applicants for the following programs:

Farm Ownership loans
Operating loans
Emergency (disaster) loans
Emergency Livestock loans
Soil and Water loans
Recreation loans
Above-Moderate Income Housing loans
Low to Moderate Income Housing loans
Very Low-Income Housing Repair loans
Irrigation and Drainage Association
loans
Rural Industrialization loans (B&I)
Grazing Association loans
Economic Emergency loans
Guaranteed program of each of the
above loan programs
Selected programs initially implemented
after the date of this Agreement

III. Duration of Agreement

This agreement shall become effective July 18, 1980
and will continue in force unless modi-
fied or terminated by the Commission.-

Farmers Home Administration

By: Gordon E. Givens

Title: Administrator

Date: 7/11/80

Federal Trade Commission

By: Campbell

Title: Secretary

Date: 7/18/80

FORM FmHA 410-4

(Rev. 9-28-82)

U.S. DEPARTMENT OF AGRICULTURE
Farmers Home AdministrationAPPLICATION FOR RURAL HOUSING ASSISTANCE
(Non Farm Tract)PLEASE PRINT OR
WRITE CLEARLY

NOTE: Page 4 may be used if additional space is required to answer any question. If the "Co-Applicant" response in Item 2 matches answer given by "Applicant in Item 1, please indicate answer by writing "SAME".

1. APPLICANT

2. CO-APPLICANT

NAME		AGE		NAME		AGE	
OTHER NAMES USED WITHIN LAST TWO YEARS				OTHER NAMES USED WITHIN LAST TWO YEARS			
SOCIAL SECURITY NUMBER		TELEPHONE NUMBER BUSINESS HOME		SOCIAL SECURITY NUMBER		TELEPHONE NUMBER BUSINESS HOME	
PRESENT ADDRESS (Street & No., City, State & ZIP Code. If located in the county, indicate distance, direction and name of road from nearest town)				PRESENT ADDRESS (Street & No., City, State & ZIP Code. If located in the county, indicate distance, direction and name of road from nearest town)			
FORMER ADDRESS IF LESS THAN TWO YEARS AT PRESENT ADDRESS				FORMER ADDRESS IF LESS THAN TWO YEARS AT PRESENT ADDRESS			
MARITAL STATUS <input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> UNMARRIED (Including single, divorced & widowed)				MARITAL STATUS <input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> UNMARRIED (Including single, divorced & widowed)			
ARE YOU A CITIZEN OR PERMANENT RESIDENT OF THE U.S? <input type="checkbox"/> YES <input type="checkbox"/> NO				ARE YOU A CITIZEN OR PERMANENT RESIDENT OF THE U.S? <input type="checkbox"/> YES <input type="checkbox"/> NO			
HAVE YOU EVER OBTAINED A LOAN FROM FmHA? <input type="checkbox"/> YES <input type="checkbox"/> NO				HAVE YOU EVER OBTAINED A LOAN FROM FmHA? <input type="checkbox"/> YES <input type="checkbox"/> NO			
IF "YES", WAS LOAN PAID IN FULL? <input type="checkbox"/> YES <input type="checkbox"/> NO				IF "YES", WAS LOAN PAID IN FULL? <input type="checkbox"/> YES <input type="checkbox"/> NO			
ARE YOU PRESENTLY RENTING? (If "Yes", complete next 3 items) <input type="checkbox"/> YES <input type="checkbox"/> NO				ARE YOU PRESENTLY RENTING? (If "Yes", complete next 3 items) <input type="checkbox"/> YES <input type="checkbox"/> NO			
NAME AND ADDRESS OF LANDLORD				NAME AND ADDRESS OF LANDLORD			
HOW LONG HAVE YOU BEEN RENTING?		MONTHLY RENT \$		HOW LONG HAVE YOU BEEN RENTING?		MONTHLY RENT \$	
NAME AND ADDRESS OF BANK		TYPE ACCOUNT <input type="checkbox"/> Checking <input type="checkbox"/> Savings		NAME AND ADDRESS OF BANK		TYPE ACCOUNT <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
NAME AND ADDRESS OF EMPLOYER				NAME AND ADDRESS OF EMPLOYER			
DATE OF EMPLOYMENT FROM: TO PRESENT		ANNUAL GROSS INCOME \$		DATE OF EMPLOYMENT FROM: TO PRESENT		ANNUAL GROSS INCOME \$	
TYPE OF WORK		WORKING HOURS FROM TO		TYPE OF WORK		WORKING HOURS FROM TO	
3. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN 3 YEARS GIVE PAST 3 YEARS EMPLOYMENT HISTORY. Continue on pg. 4 if necessary. (A=Applicant; C=Co-Applicant)							
A OR C	DATE OF EMPLOYMENT (From - To)	NAME AND ADDRESS OF EMPLOYER		TYPE OF WORK	ANNUAL GROSS INCOME	REASON FOR CHANGE	
<div style="display: flex; justify-content: space-between;"> <div>NOTICE: In accordance with 5 U.S.C. 522a, the Privacy Act of 1974, you will be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act" at the time you complete this application.</div> <div>No monies may be paid out under this program unless a completed application has been received. (7 C.F.R., Part 1910, Subpart A)</div> <div>Estimated time needed for completion: 1 hour. Number of copies required: Original only.</div> </div>							
This form will be used by FmHA to determine applicants eligibility for the requested financial assistance.							

4. AGES OF PERSONS WHO WILL BE LIVING IN HOUSEHOLD <i>(Other than Applicant and Co-Applicant)</i>	CHILDREN	FOSTER CHILDREN	OTHERS
5. LOCATION OF HOME TO BE <input type="checkbox"/> BUILT <input type="checkbox"/> PURCHASED <input type="checkbox"/> IMPROVED		6. AMOUNT REQUESTED <input type="checkbox"/> LOAN \$ <input type="checkbox"/> GRANT	7. SIZE OF LOT <i>(length and width in feet or number of acres)</i>


8. FINANCIAL STATEMENT AS OF DATE OF APPLICATION


This statement may be completed jointly by Applicant and Co-Applicant if their assets and liabilities are sufficiently joined so that the statement can be meaningfully and fairly presented on a combined basis. Otherwise a separate statement is required.

☐ COMPLETED JOINTLY ☐ NOT COMPLETED JOINTLY *(separate statement should be given on page 4)*

ITEM	VALUE A	UNPAID DEBT B	AMOUNT DELINQUENT C	MONTHLY PAYMENT D	FINAL DUE DATE E	NAME AND ADDRESS OF CREDITOR AND ACCOUNT NUMBER F
DWELLING						
OTHER REAL ESTATE						
AUTDMOBILE						
AUTOMOBILE						
ACCDUNTS DWED US						
HOUSEHOLD GODDS						
BONDS						
CASH DN HAND						
OTHER DEBTS (doctor, hospital, credit cards, etc.)						
FORMER CREDITORS						
TOTAL TAXES DUE						
JUDGEMENTS						
TOTAL	\$	\$	\$	\$	NET WORTH <small>(Total Col. A minus Total of Col. B)</small>	\$

9. TAXES DUE ▶	REAL ESTATE \$	PERSONAL \$	INCOME AND SOCIAL SECURITY \$	TOTAL \$
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10. HOUSEHOLD INCOME	RECEIVED LAST 12 MONTHS			PLANNED NEXT 12 MONTHS		
	APPLICANT	CO-APPLICANT	OTHER ADULTS	APPLICANT	CO-APPLICANT	OTHER ADULTS
TOTAL EARNINGS						
OTHER NON-BUSINESS INCOME (Social Security, pensions, welfare child support, GI, etc.)						
NET BUSINESS INCOME (Gross income, less business expense. Attach latest annual operating statement)						
ALL OTHER INCOME (Specify)						
TOTAL INCOME 						

11. HOUSEHOLD EXPENSES	SPENT LAST 12 MONTHS	PLANNED NEXT 12 MONTHS
LIVING (Food, clothing, utilities, etc.)		
TAXES PAID		
CAPITAL GOODS BOUGHT FOR CASH (Furniture, TV, car, etc.)		
ALL OTHER PAYMENTS (Specify)		
TOTAL EXPENSES 		

12. I AM (WE ARE) unable to provide the housing I (we) need on my (our) own account, and I am (we are) unable to secure the credit necessary for this purpose from other sources upon terms and conditions which I (we) can reasonably fulfill. I (we) certify that the statements made by me (us) in this application are true, complete and correct to the best of my (our) knowledge and belief and are made in good faith to obtain a loan.

WARNING: SECTION 1001 OF TITLE 18, UNITED STATES CODE PROVIDES: "WHOEVER, IN ANY MATTER WITHIN THE JURISDICTION OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES KNOWINGLY AND WILLFULLY FALSIFIES, CONCEALS OR COVERS UP . . . A MATERIAL FACT, OR MAKES ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENTS OR REPRESENTATIONS, OR MAKES OR USES ANY FALSE WRITING OR DOCUMENT KNOWING THE SAME TO CONTAIN ANY FALSE, FICTITIOUS OR FRAUDULENT STATEMENT OR ENTRY, SHALL BE FINED NOT MORE THAN \$10,000 OR IMPRISONED NOT MORE THAN 5 YEARS, OR BOTH."

DATE	SIGNATURE OF APPLICANT
DATE	SIGNATURE OF CO-APPLICANT (if any)

13. VOLUNTARY INFORMATION FOR MONITORING PURPOSES

The following information is requested by the Federal Government in order to monitor FmHA's compliance with Federal laws prohibiting discrimination against loan applicants on the basis of race, national origin, and sex. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, FmHA is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname.

APPLICANT				CO-APPLICANT			
RACE/NATIONAL ORIGIN (Not of Hispanic origin) <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AMERICAN INDIAN OR ALASKAN NATIVE <input type="checkbox"/> HISPANIC <input type="checkbox"/> ASIAN OR PACIFIC ISLANDER <input type="checkbox"/> OTHER (Specify)				RACE/NATIONAL ORIGIN (Not of Hispanic origin) <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AMERICAN INDIAN OR ALASKAN NATIVE <input type="checkbox"/> HISPANIC <input type="checkbox"/> ASIAN OR PACIFIC ISLANDER <input type="checkbox"/> OTHER (Specify)			
SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		ARE YOU A VETERAN OR ENTITLED TO VETERAN'S BENEFITS? (This question not used for monitoring purposes) <input type="checkbox"/> YES <input type="checkbox"/> NO		SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		ARE YOU A VETERAN OR ENTITLED TO VETERAN'S BENEFITS? (This question not used for monitoring purposes) <input type="checkbox"/> YES <input type="checkbox"/> NO	

TO BE COMPLETED BY COUNTY SUPERVISOR									
CHARACTERISTICS OF PRESENT HOUSING							DETERMINATION OF ELIGIBILITY		RACIAL DATA PROVIDED BY
A	B	C	D	E	F	G	<input type="checkbox"/> ELIGIBLE <input type="checkbox"/> NOT ELIGIBLE		<input type="checkbox"/> APPLICANT <input type="checkbox"/> FmHA
CERTIFICATION THAT PERSONAL INTERVIEW WAS HELD		DATE	APPLICANT INITIALS	COUNTY SUPERVISOR INITIALS	DATE	SIGNATURE OF COUNTY SUPERVISOR			

APPLICATION FOR RURAL HOUSING LOANS (NON FARM TRACT)

For County Office Use Only

RACE (Ethnic) Code—Check One

W ☐ N ☐ O ☐
AI ☐ S ☐

(Please Print or Write Plainly)

1. APPLICANT'S NAME (FIRST) (MIDDLE) (LAST)			SOCIAL SECURITY NO.	NICKNAME OR KNOWN AS
2. SPOUSE'S NAME (FIRST) (MIDDLE) (MAIDEN)			SOCIAL SECURITY NO.	TELEPHONE NO.
3. COMPLETE ADDRESS (ROUTE, POST OFFICE, STATE, ZIP CODE, COUNTY)				5. HIGHEST GRADE OF SCHOOL COMPLETED BY APPLICANT (CIRCLE APPROPRIATE YEAR)
4. AGES OF PERSONS IN HOUSEHOLD				ELEMENTARY: 1 2 3 4 5 6 7 8 HIGH SCHOOL: 1 2 3 4 COLLEGE: 1 2 3 4 5 6 OR MORE
6. ARE YOU A CITIZEN OF THE UNITED STATES? <input type="checkbox"/> YES <input type="checkbox"/> NO		IS YOUR SPOUSE A CITIZEN OF THE UNITED STATES? <input type="checkbox"/> YES <input type="checkbox"/> NO		
7. ARE YOU A VETERAN?..... <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" INDICATE SERVICE FROM _____ TO _____				
8. LOCATION OF HOME TO BE BUILT, PURCHASED OR IMPROVED				SIZE OF LOT

9. IF AN OWNER, WHEN DID YOU ACQUIRE THE HOUSE OR LOT _____, 12 _____
HOW? (PURCHASED, INHERITED, ETC.)
FROM WHOM?
IF PURCHASED, GIVE PURCHASE PRICE \$ _____

10. HAVE YOU EVER OBTAINED A LOAN FROM FARMERS HOME ADMINISTRATION ☐ YES ☐ NO
IF YES, WAS THE LOAN PAID IN FULL? ☐ YES ☐ NO

11. AMOUNT OF LIFE INSURANCE \$ _____

12. IF YOU RENT GIVE NAME AND ADDRESS OF LANDLORD
HOW LONG HAVE YOU LIVED IN THIS HOUSE
MONTHLY RENT \$ _____

13. NAME AND ADDRESS OF BANK WITH WHICH YOU HAVE A CHECKING OR SAVING ACCOUNT

14. NAME AND ADDRESS OF LENDER WITH WHICH YOU LAST HAD A LOAN

15. EMPLOYMENT RECORD OF APPLICANT. IF SPOUSE IS EMPLOYED, ALSO INCLUDE EMPLOYMENT RECORD. LIST PRESENT EMPLOYERS FIRST AND GO BACK FIVE YEARS FROM DATE OF APPLICATION. (IDENTIFY APPLICANT AS "A" AND SPOUSE AS "S.") APPLICANT'S WORKING HOURS _____ TO _____

DATE OF EMPLOYMENT (FROM - TO)	NAME OF EMPLOYER	ADDRESS OF EMPLOYER	KIND OF WORK	ANNUAL GROSS INCOME	REASON FOR CHANGE

16. CASH FAMILY INCOME	RECEIVED LAST YEAR	PLANNED THIS YEAR	17. CASH FAMILY EXPENSES	SPENT LAST YEAR	PLANNED THIS YEAR
HUSBAND'S TOTAL EARNINGS	\$	\$	FAMILY LIVING: (FOOD, CLOTHING, UTILITIES, ETC.)	\$	\$
WIFE'S TOTAL EARNINGS (IF EMPLOYED)	\$	\$	TAXES PAID	\$	\$
OTHER NON BUSINESS INCOME (SOCIAL SECURITY, PENSIONS, WELFARE ETC. IDENTIFY)	\$	\$	CAPITAL GOODS BOUGHT FOR CASH (FURNITURE, TV, CAR, ETC.)	\$	\$
NET BUSINESS INCOME (GROSS INCOME LESS BUSINESS EXPENSE ATTACH LATEST ANNUAL OPER. STATEMENT)	\$	\$	ALL OTHER PAYMENTS	\$	\$
TOTAL	\$	\$	TOTAL	\$	\$

18. FINANCIAL STATEMENT AS OF DATE OF APPLICATION

(Show property owned and debts owed by applicant and spouse)

PROPERTY OWNED		DEBTS OWED					
REAL ESTATE:	CURRENT VALUE	NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	MONTHLY PAYMENT	AMOUNT DELINQ.	UNPAID BALANCE
	\$	DEBTS ON REAL ESTATE:					
					\$	\$	\$
TOTAL REAL ESTATE	\$						
AUTO AND EQUIPMENT:		TOTAL DEBTS ON REAL ESTATE					
AUTO	\$				\$	\$	\$
OTHER EQUIPMENT (DESCRIBE)		DEBTS ON PERSONAL PROPERTY (SUCH AS AUTO, FURNITURE, TV, ETC.)					
					\$	\$	\$
					\$	\$	\$
TOTAL AUTO & EQUIPMENT	\$	TOTAL DEBTS ON PERSONAL PROPERTY:			\$	\$	\$
OTHER PERSONAL PROPERTY:		JUDGMENTS					
HOUSEHOLD GOODS	\$				\$	\$	\$
CASH ON HAND		ALL OTHER DEBTS (SUCH AS DOCTOR, STORE, ETC. - IDENTIFY)					
BONDS AND INVESTMENTS							
ACCTS. OWED US - COLLECTIBLE							
OTHER ASSETS (DESCRIBE)							
TOTAL OTHER PERSONAL PROPERTY	\$						
1. TOTAL PROPERTY OWNED	\$	TAXES DUE: REAL ESTATE \$		PERSONAL \$			
2. TOTAL ALL DEBTS	\$	INCOME & SOCIAL SECURITY \$		TOTAL TAXES DUE			\$
3. NET WORTH (1 MINUS 2)	\$						\$

19. PLANNED USE OF CASH ON HAND

20. FOR WHAT PURPOSE DO YOU NEED A RURAL HOUSING LOAN AND HOW MUCH DO YOU NEED TO BORROW?

21. I AM UNABLE TO PROVIDE THE HOUSING I NEED ON MY OWN ACCOUNT, AND I AM UNABLE TO SECURE THE CREDIT NECESSARY FOR THIS PURPOSE FROM OTHER SOURCES UPON TERMS AND CONDITIONS WHICH I CAN REASONABLY FULFILL. I CERTIFY THAT THE STATEMENTS MADE BY ME IN THIS APPLICATION ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND ARE MADE IN GOOD FAITH TO OBTAIN A LOAN.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

DATE _____, 19 _____

SIGNATURE OF APPLICANT _____

22. FOR COUNTY OFFICE USE:

☆ U.S. GPO: 1977-0-765-093 1600

Handout
Revised Form
FORMS MANUAL INSERT

FORM FmHA 1944-6 & 1944-A6

Form FmHA 1944-6 (Rev. 10-24-60)		UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION		(41)																																																
<div style="display: flex; justify-content: space-between;"> <div> Date of Note (4) </div> <div> Amount of Note (5) </div> </div>		INTEREST CREDIT AGREEMENT (Section 502 RH Loans)		Type of Agreement <input type="checkbox"/> New <input checked="" type="checkbox"/> Renewal (1) <input type="checkbox"/> Corrected Case Number (2) Effective Date of Agreement (3)																																																
Payment Plan <input type="checkbox"/> Annual (6) <input type="checkbox"/> Monthly																																																				
<p>I, This agreement between the United States of America, acting through the Farmers Home Administration pursuant to Section 131 of the Housing Act of 1949, (herein called "the Government") and the borrower whose name appears below (herein called "Borrower") supplementary promissory notes or assignment agreements (herein called "this note", whether one or more) from Borrower to the Government as described above.</p> <p>N. TO BE COMPLETED BY BORROWER (If additional space is needed, attach additional sheets)</p> <p>A. Complete the following for borrower, co-borrower, and all adult members of the household who will receive income:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Name</th> <th colspan="3">Planned Income Next 12 Months</th> <th rowspan="2">Name and address of employer or source of income</th> </tr> <tr> <th>Adm</th> <th>Wage</th> <th>Other</th> </tr> </thead> <tbody> <tr> <td>1. (7)</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>4.</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>B. Number of dependent minor children (not including foster children) residing in the dwelling <input type="checkbox"/> (8)</p> <p>C. Annual Real Estate Taxes (Dwellings Only) (9) Annual Property Insurance Premium (Dwellings Only) (10)</p> <p>SIGNATURES OF BORROWERS I (we) certify that this information is correct to the best of my (our) knowledge and have read and understand the requirements and conditions on the reverse of this agreement.</p> <p>WARNING Section 1001 of Title 18 United States Code provides: "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false statement or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."</p>					Name	Planned Income Next 12 Months			Name and address of employer or source of income	Adm	Wage	Other	1. (7)					2.					3.					4.																								
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(36) (Date Approved)		UNITED STATES DEPARTMENT OF AGRICULTURE FARMERS HOME ADMINISTRATION																																																		
(37) (Title)		By (38)																																																		
		RETURN TO																																																		
(39)		(40)																																																		

No money or other benefits may be paid out under this program unless the agreement is completed and filed as required by existing law and regulations (7 CFR 1944-A).

Estimated time to complete: 30 min.
Number of copies required: Orig. & 3

This form is used by FmHA to calculate the amount of interest added. The Borrower will receive and the amount Borrower will pay as a regular loan installment.

FmHA 1944-6 (Rev. 10-24-60)

To be used for insured Rural Housing (RH) loans to low-and-moderate income Families who are eligible to receive interest credits.

(see reverse)

PROCEDURE REFERENCE	: FmHA Instruction 1944-A.
PREPARED BY	: County Supervisor and Borrower.
NUMBER OF COPIES	: Original and two.
SIGNATURES REQUIRED	: Original by borrower, spouse, and FmHA Official.
DISTRIBUTION OF COPIES	: Copy to Finance Office; copy to borrower; original retained in County Office.

(12-21-81) SPECIAL FN

INSTRUCTIONS FOR PREPARATION

ALL COMPUTATIONS MADE TO DETERMINE THE AMOUNT OF INTEREST CREDIT SHOULD BE ROUNDED TO THE NEAREST DOLLAR

(1) TYPE OF AGREEMENT

Item 1 - Item 1 will be marked for all initial loans with interest credit, and in all other cases when interest credit is being granted and the borrower is not presently receiving interest credit.

Item 2 - Item 2 will be marked when an interest credit agreement is being processed to continue interest credit with a borrower whose current interest credit agreement is expiring.

Item 3 - Item 3 will be marked when the borrower's present interest credit agreement is to be cancelled or amended by the new interest credit agreement.

(2) Insert borrower's case number.

(3) Insert the date the agreement is to be effective and applied to the borrower's loan account. The effective date will be as follows:

(a) For initial or subsequent loans, the loan closing date or when appropriate, the amortization effective date.

(b) For transfers or credit sales, the date the transaction is closed.

(c) For renewals of expiring interest credit agreements, one day after the expiration date of the current interest credit agreement. For reviews not completed during the review period, one day after the expiration date of the previous interest credit agreement.

(d) For interest credit renewed, or granted as a result of a borrower's appeal, one day after the previous agreement expired or was cancelled, or on the date the initial agreement should have been effective.

(e) For all other cases, the date the agreement is approved.

(4) Insert date of promissory note or assumption agreement. If a subsequent loan eligible for interest credit is involved, show the date of the subsequent loan separately and below the date of the initial loan.

(5) Insert amount of initial loan in figures as shown in the promissory note or assumption agreement. If a subsequent loan eligible for interest credit is involved, insert amount of the subsequent loan separately and below the amount of the initial loan.

(6) Insert the type of the borrower's payment plan.

(7) Insert the name, age, planned income for next 12 months of the borrower, spouse and all adult members of the household who will receive income and the name and address of employer(s).

(8) Insert the number of dependent children.

(9) Insert the amount of annual real estate taxes applicable to the dwelling and dwelling site as improved. If the dwelling is on a farm, only the taxes applicable to the dwelling and dwelling site will be shown.

(10) Insert the amount of annual property insurance premium for the dwelling.

(11) Borrower's will sign and date the agreement exactly as name is typed in item 37.

(12) Insert the amount of annual income in accordance with FmHA Instruction 1944-A.

(13) Insert the amount of deduction (5% x Annual Income). This deduction is authorized regardless of the source of income.

(14) Insert the amount of income adjustment computed as instructed on the form.

(15) Item (12) minus items (13) and (14) rounded to nearest \$10.00.

(16) Insert the annual total of regular installments for all loans eligible for interest credit. For annual installment repayment schedules, insert amount of regular annual installment as shown on the promissory note. For monthly installment borrowers, insert 12 times the monthly installment as shown on the promissory note. If more than one loan is involved, use the annual total of regular installments for all loans eligible for interest credit.

INTEREST CREDIT AGREEMENT

(Section 502 RH Loans)

Date of Note	Amount of Note
--------------	----------------

Type of Agreement 1 <input type="checkbox"/> New 2 <input type="checkbox"/> Renewal 3 <input type="checkbox"/> Corrected
Case Number
Effective Date of Agreement

1. This agreement between the United States of America, acting through the Farmers Home Administration pursuant to section 531 of the Housing Act of 1949, (herein called "the Government") and the borrower whose name and address appears below (herein called "Borrower") supplements promissory note(s) or assumption agreement(s) (herein called "the note", whether one or more) from Borrower to the Government as described above.

2. TO BE COMPLETED BY BORROWER

Borrower certifies that the following information is correct to the best of Borrower's knowledge as of the date of this agreement

A. Employment

	Occupation	Years Empl.	Name and Address of Employer
Borrower			
Spouse			
Other Family Member(s)			

B. Household Composition and Family Income			Actual Income Last 12 Mos.		Planned Income Next 12 Mos.		Source of Other Income
Name	Age	Relationship	Wages	Other	Wages	Other	
(1)		Borrower					
(2)		Spouse					
(3)							
(4)							
(5)							
(6)							
(7)							
(8)							
TOTALS							

C. Annual Real Estate Taxes (Dwelling Only) \$ _____
Annual Property Insurance Premiums (Dwelling Only) \$ _____

3. TO BE COMPLETED BY COUNTY OFFICE

1. Current Annual Income _____	Annual Note	Annual Note
2. Five Percent Deduction _____	Installment () _____	Installment _____
3. Number Eligible _____	Real Estate Taxes () _____	Note Installment _____
Minor Dependents _____	Property Insurance () _____	if loan were amortized _____
X \$300 _____	Total () _____	at 1% interest rate _____
4. Other Income _____	Adjusted Family	
Deductions _____	Income X 20% () _____	Difference _____
5. Adjusted Family Income _____	Difference () _____	
(1 minus 2, 3, and 4) _____		

4. Annual Installment Note. Subject to the provisions of this agreement, the Government will reduce the interest rate on the note so that the amount due January 1, 19 ____ will be reduced by \$ _____ and the amount due January 1, 19 ____ will be reduced by \$ _____ based on the above calculations.

Monthly Installment Note. Subject to the provisions of this agreement, the Government will reduce the interest rate on the note so that the amount due in each of the next 24 months will be reduced by \$ _____ based on the above calculations.

SIGNATURES OF BORROWER AND SPOUSE: I (We) have read and understand the requirements and conditions on the reverse of this agreement.

(Borrower)

(Spouse)

RETURN TO:

Section 202.2 - Definitions and Rules of Construction

1. Account - an extension of credit.
2. Act - Equal Credit Opportunity Act (Title VII of the consumer credit act.
3. Adverse action - A refusal to grant credit in substantially the amount and terms requested by the applicant; unless, the creditor offers to grant credit in a different amount or terms requested by the applicant, and the applicant accepts the credit offered.

This includes a refusal by the creditor to increase the amount of available credit to the applicant, in accordance with established procedures, by the creditor for the type of credit involved.
4. Age - Refers only to a natural person, and means the number of years from the date of an applicant's birth.
5. Applicant - Any person who requests or has received an extension of credit from a creditor. This includes any person who is, or may be contractually liable regarding an extension of credit.
6. Application - An oral or written request for an extension of credit from a creditor, and is made in accordance with established procedures of the creditor for the type of credit involved.
7. Completed Application - An application which a creditor has received and includes all additional information that a creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested. (Includes, credit report, verification of income, or any other information that is needed from the applicant).

The creditor is to exercise reasonable diligence in obtaining such information.

Where an application is incomplete regarding matters that the applicant must/or can complete, a creditor shall make reasonable effort to notify the applicant of the incompleteness, and shall allow the applicant a reasonable opportunity to complete the application.

8. Contractually
liable

- expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

9. Credit

- The right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services with deferment of payment.

10. Creditor

- A person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit.

11. Credit
transaction

- Every aspect of an applicant's dealings with a creditor regarding an application for an extension of credit, including an extension of existing credit, including but not limited to; (a) information requirements, (b) investigation procedures, (c) standards of credit worthiness, (d) terms of credit, (e) furnishing credit information, (f) revocation, alteration or termination of credit and, (g) collection procedures.

Note: In FmHA, this means that the ECOA regulation applies from the moment the applicant makes a request for an application, includes all the processing activities involved in approving the application, in closing the loan, and in applying all servicing authorities.

12. Discriminate
against an
applicant

- to treat an applicant less favorably or different than other applicants.

13. Elderly

- an age of 62 or older.

14. Good faith

- honesty in fact, in the conduct or transaction.

15. Inadvertent
error

- a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures adapted to avoid any such error.

16. Judgemental
system of
evaluating
applicants

- any system for evaluating the credit worthiness of an applicant based on the creditor's judgement. (This is the system used in FmHA).

17. Marital status - the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this part, the term "unmarried" includes persons who are single, divorced, or widowed.
18. Person - a natural person, corporation government or government subdivision, or agency, trust, estate, partnership, cooperative or association.
19. Pertinent element of credit worthiness - in relation to a judgmental system or evaluating applicants, means any information about applicants that a creditor obtains and considers which has a demonstratable relationship to a determination of credit worthiness.
20. Prohibited basis - means race, color, religion, national origin, sex, marital status or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Protection Act or any State law upon which an exemption has been granted by the Board.

Note: The first clause of the definition is not limited to the characteristics of an applicant. "Prohibited basis" refers not only to race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers to the characteristics of individuals with whom an applicant deals.

This means, for example, that a creditor may not discriminate against a non-Jewish applicant because of that person's business, dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit will benefit (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located.

A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments, or other countries, or imposing limitations regarding credit extended for their use.

**"QUAL CREDIT OPPORTUNITY ACT
Course Outline**

202.4 General Rule Prohibiting Discrimination

FHA shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

202.5 Rules Concerning Applications

AUTHORIZATIONS:

FmlIA:

1. May request a listing of all accounts upon which the applicant is liable including the names and addresses in which the accounts are carried. 202.5(c) (3)

PROHIBITIONS:

FmlIA May Not:

1. Discourage prospective credit applicants on a prohibited basis by oral comments or written statements. 202.5(a)
2. Request information about the spouse or former spouse of an applicant. 202.5(c) (1)

Exceptions:

- A. If the spouse will be contractually liable on the account. 202.5(c)(2)(ii) (RH; FP)
- B. If applicant is relying on spouse's income to repay the debt or receipt of that income will be considered for eligibility. 202.5(c)(2)(iii) (RH; FP)
- C. If the applicant resides in a community property State. (Consult State laws and your legal counsel) 202.5(c)(2)(iv) (RH; FP)
- D. If the applicant is using property located in a community property State as basis for repayment of the debt. 202.5(c)(2)(iv) (FP)
- E. If the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse to repay the debt or receipt of that income will be considered for eligibility. 202.5(c)(2)(v) (RH; FP)

202.5 Applications - Continued

AUTHORIZATIONS:

FmlIA:

4. May request information about the number and ages of applicant's dependents or dependent related financial obligations if such inquiries are made without regard to any prohibited criteria. 202.5(d)(4)

5. May inquire about an applicant's immigration status and permanent residence. 202.5(d)(5)

PROHIBITIONS:

FmlIA May Not:

5. Request information about birth control practices, child-bearing or child rearing intentions or capabilities. 202.5(d)(4)

Exceptions:

None.

6. Request the race, color, religion or national origin of a credit applicant. 202.5(d)(5)

Exceptions:

- A. For authorized monitoring purposes to collect race/ national origin and sex data. (RH; PP; B&I; CP)
(See note on bottom of last page)

202.6 Rules Concerning Evaluation of Applications

AUTHORIZATIONS:

FmHA:

1. May consider any information that the creditor obtains in evaluation of credit, if the information is not otherwise used to discriminate on a prohibited basis. 202.6(a)
2. May always inquire into the possible continuity of any income listed by the applicant to establish creditworthiness. 202.6(b)(2) (Footnote 9)
3. To the extent the creditor considers credit history: FmHA shall consider accounts that the applicant and spouse are permitted to use or for which both are contractually liable. 202.6(b)(6)(i)
4. Shall consider any information that the applicant may present tending to indicate that the credit history being considered does not accurately reflect the applicant's creditworthiness. 202.6(b)(ii)
5. Shall consider, on applicant's request, the credit history of any account reported in the name of the applicant's spouse or former spouse which can be shown to be demonstrative of the applicant's creditworthiness. 202.6(b)(6)(iii)

PROHIBITIONS:

FmHA May Not:

1. Consider any prohibited basis in any system of evaluating applicants. 202.6(b)(1)
2. Consider age of applicant in the credit evaluation process, provided that the applicant has the capacity to enter into a binding contract. 202.6(b)(2)(i)

Exceptions:
 - A. In any credit evaluation system where consideration of age of the applicant is used to favor the applicant. 202.6(b)(2)(iii) (Footnote 9)
3. Cannot in any fashion use public assistance as a base for discrimination.

Exceptions:
 - A. In a judgmental credit evaluation system, where consideration of whether applicant's income is derived from any public assistance program is used only for purposes of determining eligibility and creditworthiness. 202.6 (b)(2)(iii) (Footnote 9)

AUTHORIZATIONS:

FmlA:

6. May consider the permanent residence or immigration status of applicant. 202.6(b)(7)
7. May consider State property laws directly or indirectly affecting creditworthiness. 202.6(c)
8. May consider any income to the extent that it is likely to be continued. 202.6(b)(5)

PROHIBITIONS:

FmlA May Not:

4. Consider assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or for that reason will receive diminished or interrupted income, in evaluating creditworthiness. 202.6(b)(3)
5. Consider the existence of a telephone listing in the applicant's name for consumer credit. 202.6(b)(4)

Exceptions:

- A. FmlA may ask the applicant's telephone number for contact purposes. (RH; FP; B&I; CP)
6. Discount any income because it is:
202.6(b)(5)
 - (a) derived from part-time employment.
 - (b) derived from an annuity.
 - (c) derived from a pension or other retirement benefit.
 - (d) derived from alimony, child support, or separate maintenance payments.

202.7 Rules Concerning Extension of Credit

PROHIBITIONS:

FmlIA May Not:

1. Refuse to grant an individual account to a creditworthy applicant on any prohibited basis (sex, marital status, etc.) 202.7(a)
2. Prohibit an applicant from opening or maintaining an account in a birth given first name and birth given surname, the spouse's surname, or a combined surname. 202.7(b)
3. Require the signature of applicant's spouse or other person on any credit instrument (other than a joint application), if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. 202.7(d)(1)

Exceptions:

- A. If applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instruments necessary, or reasonably believed by the creditor to be necessary, under applicable State laws to make the property being offered as security available to satisfy the debt in the event of default; for example, any instrument to create a valid lien, pass clear title or waive inchoate rights. (RM; FP; B&I; CP)

202.8 Special Purpose Credit Programs

Most of FmHA programs qualify as Special Purpose Credit Assistance Programs and, as such, FmHA may request of an applicant and may consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support or separate maintenance, and the spouse's financial resources. After eligibility has been determined, FmHA should proceed according to Equal Credit Opportunity Act regulations.

(B61 Guaranteed program does not qualify as a Special Purpose Credit Program.)

202.9 Notifications

REQUIREMENTS:

For FmIA Housing and Farm Programs:

1. Within 30 days of receipt of completed application, FmIA must notify the applicant of action taken:
 - (a) determination of eligibility
 - (b) adverse action
- If a determination of eligibility cannot be made within 30 days from the date of the completed application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision. The letter will contain the ECOA notice.

Applicants determined eligible but further processing is delayed due to apparent lack of interest will be advised by letter that application will be withdrawn unless County Office receives a notice within 30 days that further consideration is desired. All withdrawn notices will include the ECOA notice.

Please Note:

These requirements do not apply for extensions of credit primarily for business or commercial purposes including extensions of credit primarily for agricultural purposes unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action. (B&I; CP)

FmIA policy is that we will follow the spirit and intent of Regulation B and will exercise our exemptions allowed under the law as program needs dictate. Program regulations will be revised as necessary to implement this administrative policy. Refer to the specific ECOA program outlines for additional information.

REQUIREMENTS:

Rule:

2. Notification of adverse action must be in writing and must contain the following:

- a statement of the action taken (202.9(a)(2));
- a statement of specific reasons for the action taken (202.9(a)(2)(1)
- the ECOA notice (202.9(b)(1) ; and
- FHA appeal rights

3. When multiple applicants are involved, the notification need only be given to the primary applicant. 202.9(a)(3)

4. When multiple creditors are involved and either no credit is offered or the applicant does not expressly accept an offer, each creditor taking adverse action must send the required notification 202.9(a)(4)

Exceptions:

A. Notification of adverse action is not required if applicant accepts or uses credit offered by one of the creditors. 202.9(a)(4)

B. The required notification by multiple creditors may be provided indirectly through a third party (i.e., one of the creditors) if the identity of each creditor is disclosed. 202.9(a)(4)

REQUIREMENTS:

FmlIA:

1. FmlIA must determine for its accounts whether the applicant's spouse is contractually liable and designate such account to reflect the fact of participation of both spouses.
202.10(a)(1)
2. Must furnish requested credit information in the name of the particular spouse about which the information is requested.
202.10(a)(3)
3. Must, within 90 days after receipt of a borrower's request, designate an account to reflect the fact of participation of both spouses.
202.10(c)

Exceptions: (to all 3 requirements)

- A. Business credit is exempt from the provision of 202.10 relating to the furnishing of credit information. 202.3(e)(3)
(B&I; CP)

202.11 Relation to State Law

ECOA affects only those State laws that are inconsistent with it, and then only to the extent of the inconsistency. A State law may be more protective of an applicant but not less protective than the regulations of ECOA. It does not alter or annul any provision of State property laws, laws relating to the disposition of decedent's estate or Federal or State banking regulations directed only toward insuring the solvency of financial institutions.

202.12 Record Retention

REQUIREMENTS:

FmlHA:

1. Must, for 25 months after date of notification of action on application, retain the following:

- (a) any written or recorded information used in evaluating the application (202.12(b)(1)(i))
- (b) copy of the notification of action taken (202.12(b)(1)(ii)(A))
- (c) copy of the statement of specific reasons for adverse action (202.12(b)(1)(ii)(B))
- (d) copy of any written statement submitted by applicant alleging a violation (202.12(b)(1)(iii))

Exceptions:

- A. Business credit is exempt from processing of 202.12(b) relating to the retention of records unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained. 202.3(e)(4) (B&I; CP)

PROHIBITIONS:

FmlHA may not retain information prohibited by this Act in its files;

Except where such information is obtained:

- (a) at any time from a CRA (202.12(a)(2)), or
- (b) at any time from an applicant or others without the specific request of the creditor (202.12(a)(3)), or
- (c) at any time as required for monitoring purposes. (202.12(a)(4) and 202.13)

202.13 Information for Monitoring Purposes

REQUIREMENTS:

FmlHA:

1. Must request information about race/national origin, sex, marital status (using the categories "married", "unmarried" or "separated") and age from an applicant applying for consumer credit relating to the purchase of residential real property, where the credit is to be secured by the property, for the purpose of monitoring compliance with the Act and Regulations. 202.13(a)

2. Must disclose to the applicant and joint applicant (if any) that the information described in #1 above is being requested by the Federal Government to monitor compliance with anti-discrimination laws, and the information is not required to qualify for credit and that the information will not be considered in evaluating the credit. 202.13(c)

NOTE: In regard to this section, FmlHA is requesting from the Federal Trade Commission approval for a substitute monitoring program regarding race and sex.

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

EQUAL CREDIT OPPORTUNITY

REGULATION B
(12 CFR 202)

Effective March 23, 1977



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STATUTORY AUTHORITY

This regulation is based upon and issued pursuant to provisions of section 703 of the Equal Credit Opportunity Act, U.S.C., Title 15, sec. 1691 *et seq.*

REGULATION B

(12 CFR 202)

Effective March 23, 1977

EQUAL CREDIT OPPORTUNITY

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

(a) **Authority and scope.** This Part ¹ comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601 *et seq.*). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in section 202.2(l).

(b) **Administrative enforcement.** (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements im-

posed under the Act and this Part will be enforced by the Federal Trade Commission.

(c) **Penalties and liabilities.** (1) Sections 706(a) and (b) of the Act provide that any creditor who fails to comply with any requirement imposed under the Act or, pursuant to section 702(g), this Part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason.

¹ As used herein, the words "this Part" mean Regulation B, 12 CFR 202.

(3) As provided in section 706(f), a civil action under the Act or this Part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General within two years after the alleged violation.

(4) Sections 706(g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action.

(d) **Interpretations.** (1) A request for a formal Board interpretation or an official staff interpretation of this Part must be addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for an interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request, and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and must specify the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request, or an acknowledgement will be sent that sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of this Part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the *Federal Register*. Each request for reconsideration must contain a statement setting forth in full the reasons why the person

making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute, and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgement will be sent that sets a reasonable time within which such response will be given.

(3) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests that involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and that raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests that, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or that have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of section 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction shall apply: ²

(a) **Account** means an extension of credit. When employed in relation to an account, the word **use** refers only to open end credit.

(b) **Act** means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) **Adverse action.** (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

² Note that some of the definitions in this Part are not identical to those in 12 CFR 226 (Regulation Z).

tion in a credit transaction involves honoring a credit card.

(m) **Credit transaction** means every aspect of an applicant's dealings with a creditor regarding an application for, or an existing extension of, credit including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures.

(n) **Discriminate against an applicant** means to treat an applicant less favorably than other applicants.

(o) **Elderly** means an age of 62 or older.

(p) **Empirically derived credit system.** (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) determine, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A **demonstrably and statistically sound, empirically derived credit system** is a system:

(i) in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) which is periodically revalidated as to its predictive ability by the use of appropriate

statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subsection (2)(iii), then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) **Extend credit and extension of credit** mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) **Good faith** means honesty in fact in the conduct or transaction.

(s) **Inadvertent error** means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) **Judgmental system of evaluating applicants** means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) **Marital status** means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) **Negative factor or value**, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) a change in the terms of an account expressly agreed to by an applicant; or

(ii) any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) a refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(d) **Age** refers only to natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) **Applicant** means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) **Application** means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A **completed application for credit** means an ap-

plication in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) **Board** means the Board of Governors of the Federal Reserve System.

(h) **Consumer credit** means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) **Contractually liable** means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) **Credit** means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) **Credit card** means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) **Creditor** means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participa-

are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) **Open end credit** means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(x) **Person** means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) **Pertinent element of creditworthiness**, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) **Prohibited basis** means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act³ or any State law upon which an exemption has been granted by the Board.

(aa) **Public assistance program** means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or

³ The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in section 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(bb) **State** means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

SECTION 202.3—SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS

(a) **Classes of transactions afforded special treatment.** Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal government, a State, or a political subdivision thereof;

(2) extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) extensions of incidental consumer credit, other than of the types described in subsections (a)(1) and (2):

(i) that are not made pursuant to the terms of a credit card account;

(ii) on which no finance charge as defined in section 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) that are not payable by agreement in more than four instalments;

(4) extensions of credit primarily for business or commercial purposes, including extensions of

credit primarily for agricultural purposes, but excluding extensions of credit of the types described in subsections (a)(1) and (2); and

(5) extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) **Public utilities credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(1):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.10 relating to furnishing of credit information; and

(3) section 202.12(b) relating to record retention.

(c) **Securities credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(2):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(3) concerning information about the sex of an applicant;

(4) section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) section 202.7(d) relating to signature of a spouse or other person;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(d) **Incidental credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(3):

(1) section 202.5(c) concerning information about a spouse or former spouse;

(2) section 202.5(d)(1) concerning information about marital status;

(3) section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) section 202.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) section 202.7(d) relating to signature of a spouse or other person;

(6) section 202.9 relating to notifications;

(7) section 202.10 relating to furnishing of credit information; and

(8) section 202.12(b) relating to record retention.

(e) **Business credit.** The following provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(4):

(1) section 202.5(d)(1) concerning information about marital status;

(2) section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) section 202.10 relating to furnishing of credit information; and

(4) section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) **Governmental credit.** Except for section 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretations, section 202.2 relating to definitions and rules of construction, this section, section 202.4 relating to the general rule prohibiting discrimination, section 202.6(a) relating to the use of information, section 202.11 relating to State laws, and section 202.12(a) relating to the retention of prohibited information, the provisions of this Part shall not apply to extensions of credit of the type described in subsection (a)(5).

SECTION 202.4—GENERAL RULE PROHIBITING DISCRIMINATION

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

SECTION 202.5—RULES CONCERNING APPLICATIONS

(a) **Discouraging applications.** A creditor shall not make any oral or written statement, in adver-

tising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) General rules concerning requests for information. (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.¹

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in section 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this Part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of section 202.7(e) regarding insurance and sections 202.8(c) and (d) regarding special purpose credit programs.

(c) Information about a spouse or former spouse. (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under (v) below) that may be requested about the applicant if:

(i) the spouse will be permitted to use the account; or

(ii) the spouse will be contractually liable upon the account; or

(iii) the applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

(v) the applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) Information a creditor may not request. (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.² Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of ali-

¹ This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by section 202.6 (rules concerning evaluation of applications).

² This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subsection (b)(1).

mony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(c) **Application forms.** A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own;⁶ use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

(1) by asking for additional information not prohibited by this section;

(2) by deleting any information request; or

(3) by rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form

⁶ A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first. The provisions of this Part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d).

SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

(a) **General rule concerning use of information.**

Except as otherwise provided in the Act and this Part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.⁷

(b) **Specific rules concerning use of information.**

(1) Except as provided in the Act and this Part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.⁸

(2)(i) Except as permitted in this subsection, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only

⁷ The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p. 5.

⁸ This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with section 202.8 (special purpose credit programs).

for the purpose of determining a pertinent element of creditworthiness.⁹

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment, or from an annuity, pension, or other retirement benefit; but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include,

⁹ Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) the credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) on the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) **State property laws.** A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.7—RULES CONCERNING EXTENSIONS OF CREDIT

(a) **Individual accounts.** A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) **Designation of name.** A creditor shall not prohibit an applicant from opening or maintaining

an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) **Action concerning existing open end accounts.** (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

- (i) require a reapplication; or
- (ii) change the terms of the account; or
- (iii) terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) **Signature of spouse or other person.** (1) Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the

creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,¹⁰ a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) **Insurance.** Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this Part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

¹⁰ If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

**SECTION 202.8—SPECIAL PURPOSE
CREDIT PROGRAMS**

(a) **Standards for programs.** Subject to the provisions of subsection (b), the Act and this Part are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

(i) the program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) the program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) **Applicability of other rules.** (1) All of the provisions of this Part shall apply to each of the special purpose credit programs described in subsection (a) to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subsections (a)(2) or (a)(3) shall qualify as a special purpose credit program under subsection (a) only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), income derived

from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(c) **Special rule concerning requests and use of information.** If all participants in a special purpose credit program described in subsection (a) are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(d) **Special rule in the case of financial need.** If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in subsection (a), then, notwithstanding the prohibitions of sections 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of section 202.7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this Part.

SECTION 202.9—NOTIFICATIONS

(a) **Notification of action taken, ECOA notice, and statement of specific reasons.**

(1) **Notification of action taken.** A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) **Content of notification.** Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) **Multiple applicants.** If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) **Multiple creditors.** If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one

creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) **Form of ECOA notice and statement of specific reasons.**

(1) **ECOA notice.** A creditor satisfies the requirements of subsection (a)(2) regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) **Statement of specific reasons.** A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in check-list or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i). Statements that the adverse action was based on the creditor's internal standards or pol-

icies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

**STATEMENT OF CREDIT DENIAL,
TERMINATION, OR CHANGE**

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit: _____

Description of Adverse Action Taken: _____

**PRINCIPAL REASON(S) FOR ADVERSE
ACTION CONCERNING CREDIT**

- ☐ Credit application incomplete
- ☐ Insufficient credit references
- ☐ Unable to verify credit references
- ☐ Temporary or irregular employment
- ☐ Unable to verify employment
- ☐ Length of employment
- ☐ Insufficient income
- ☐ Excessive obligations
- ☐ Unable to verify income
- ☐ Inadequate collateral
- ☐ Too short a period of residence
- ☐ Temporary residence
- ☐ Unable to verify residence
- ☐ No credit file
- ☐ Insufficient credit file
- ☐ Delinquent credit obligations
- ☐ Garnishment, attachment, foreclosure, repossession, or suit
- ☐ Bankruptcy
- ☐ We do not grant credit to any applicant on the terms and conditions you request.
- ☐ Other, specify: _____

**DISCLOSURE OF USE OF INFORMATION
OBTAINED FROM AN OUTSIDE SOURCE**

- ☐ Disclosure inapplicable
 - ☐ Information obtained in a report from a consumer reporting agency
- Name: _____

Street address: _____

Telephone number: _____

Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

[Add ECOA Notice]

(3) **Other information.** The notification required by subsection (a)(1) may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) **Oral notifications.** The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) **Withdrawn applications.** Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subsection (a)(1).

(e) **Failure of compliance.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) **Notification.** A creditor notifies an applicant when a writing addressed to the applicant is deliv-

ered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 202.10—FURNISHING OF CREDIT INFORMATION

(a) **Accounts established on or after June 1, 1977.** (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) designate any such account to reflect the fact of participation of both spouses.¹¹

(2) Except as provided in subsection (3), if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.¹²

(b) **Accounts established prior to June 1, 1977.** For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) not later than June 1, 1977

(i) determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

¹¹ A creditor need not distinguish between participation as a user or as a contractually liable party.

¹² If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

(ii) designate any such account to reflect the fact of participation of both spouses;¹³ and

(iii) comply with the reporting requirements of subsections (a)(2) and (a)(3); or

(2) mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.¹⁴ The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977, regarding each account for which a billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit

¹³ See footnote 11.

¹⁴ A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please complete and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning the account in both our names.

Account number _____ Print or type name _____

_____ Print or type name _____

Signature of either spouse _____

(c) **Requests to change manner in which information is reported.** Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in subsection (b), a creditor shall designate the account to reflect the fact of participation of both spouses.¹⁵ When furnishing information concerning any such account, the creditor shall comply with the reporting requirements of subsections (a)(2) and (a)(3). The signature of an applicant or the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(d) **Inadvertent errors.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

¹⁵ See footnote 11.

SECTION 202.11—RELATION TO STATE LAW

(a) **Inconsistent State laws.** Except as otherwise provided in this section, this Part alters, affects, or preempts only those State laws that are inconsistent with this Part and then only to the extent of the inconsistency. A State law is not inconsistent with this Part if it is more protective of an applicant.

(b) **Preempted provisions of State law.** (1) State law is deemed to be inconsistent with the requirements of the Act and this Part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that such law:

(i) requires or permits a practice or act prohibited by the Act or this Part;

(ii) prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) prohibits inquiries or collection of data required to comply with the Act or this Part;

(iv) prohibits asking age or considering age in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) prohibits inquiries necessary to establish or administer a special purpose credit program as defined by section 202.8.

(2) A determination as to whether a State law is inconsistent with the requirements of the Act and this Part will be made only in response to a request for a formal Board interpretation. All requests for such interpretations, in addition to meeting the requirements of section 202.1(d), shall comply with the applicable provisions of subsections (b)(1) and (2) of Supplement I to this Part. A determination shall be based on the factors enumerated in this subsection and, as applicable, subsection (c) of Supplement I. Notice of the interpretation shall be provided as specified in subsection (e)(1) of Supplement I, but the interpretation shall be effective in accordance with section 202.1. The interpretation shall be subject to revocation or modification at any time, as provided in subsection (g)(4) of Supplement I.

(c) **Finance charges and loan ceilings.** If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the

accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.¹⁶

(d) **State and Federal laws not affected.** This section does not alter or annul any provision of State property laws, laws relating to the disposition of decedents' estates, or Federal or State banking regulations directed only toward insuring the solvency of financial institutions.

(e) **Exemption for State regulated transactions.**

(1) In accordance with the provisions of Supplement I to this Part, any State may apply to the Board for an exemption from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this Part for any class of credit transactions within the State. The Board will grant such an exemption if:

(i) the Board determines that, under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this Part; and

(ii) there is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act will continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to subsection (c)(1) and Supplement I; and, generally, to aid in implementing the Act:

(i) no such exemption shall be deemed to extend to the civil liability provisions of sections 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) after an exemption has been granted, the requirements of the applicable State law shall

¹⁶ For example, in a State with a permissible loan ceiling of \$1,000, if a married couple were jointly liable for unpaid debt in the amount of \$250, each spouse could subsequently become individually liable for \$750.

constitute the requirements of the Act and this Part, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this Part.

SECTION 202.12—RECORD RETENTION

(a) **Retention of prohibited information.** Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this Part, shall not constitute a violation of the Act or this Part where such information was obtained:

(1) from any source prior to March 23, 1977;¹⁷ or

(2) at any time from consumer reporting agencies; or

(3) at any time from an applicant or others without the specific request of the creditor; or

(4) at any time as required to monitor compliance with the Act and this Part or other Federal or State statutes or regulations.

(b) **Preservation of records.** (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof:¹⁸

(i) any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) a copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) the notification of action taken; and

¹⁷ Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

¹⁸ "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

(B) the statement of specific reasons for adverse action; and

(iii) any written statement submitted by the applicant alleging a violation of the Act or this Part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:¹⁹

(i) any written or recorded information concerning such adverse action; and

(ii) any written statement submitted by the applicant alleging a violation of the Act or this Part.

(3) In addition to the requirements of subsections (b)(1) and (2), any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or that has been served with notice of an action filed pursuant to section 706 of the Act and sections 202.1(b) or (c) of this Part, shall retain the information required in subsections (b)(1) and (2) until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with section 202.9 (notifications) shall retain for the time period specified in subsection (b) all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) **Failure of compliance.** A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

(a) **Scope and information requested.** (1) For the purpose of monitoring compliance with the provisions of the Act and this Part, any creditor

that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

(i) race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) sex;

(iii) marital status, using the categories married, unmarried, and separated; and

(iv) age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) **Method of obtaining information.** Questions regarding race/national origin, sex, marital status, and age may be listed, at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) **Disclosure to applicant and joint applicant.** The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal government for the purpose of monitoring compliance with Federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

(d) **Substitute monitoring program.** Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in subsections (a), (b), and (c).

¹⁹ See footnote 18.

STATUTORY APPENDIX

Equal Credit Opportunity Act (as amended
March 23, 1976)

TITLE V—PUBLIC LAW 93-495

Sec.

502. Findings and purpose.

503. Amendment to the Consumer Credit Protection Act.

§ 502. Findings and purpose

The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status.

§ 503. Amendment to the Consumer Credit Protection Act

The Consumer Credit Protection Act (Public Law 90-321) is amended by adding at the end thereof a new title VII:

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.

701. Prohibited discrimination; reasons for adverse action.

702. Definitions.

703. Regulations.

704. Administrative enforcement.

705. Relation to State laws.

706. Civil liability.

707. Annual reports to Congress.

708. Effective date.

709. Short title.

§ 701. Prohibited discrimination; reasons for adverse action*

(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(b) It shall not constitute discrimination for purposes of this title for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

* Effective date for amendments to section 701 is March 23, 1977. All other amendments are effective upon enactment.

(3) any special purpose credit program offered by a profitmaking organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms

requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

§ 702. Definitions

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

§ 703. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family,

or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding \$100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) Section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board,

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) The Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) The Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association.

(8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) for the purpose of enforcing compliance with any requirement imposed under this title shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed

under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

§ 705. Relation to State laws

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person aggrieved by such conduct may

bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this title if the Board determines that such law gives greater protection to the applicant.

(g) The Board shall by regulation exempt from the requirements of sections 701 and 702 of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706.

§ 706. Civil liability

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, in addition to any actual damages provided in subsection (a), except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of

failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if

unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

§ 707. Annual reports to Congress

Not later than February 1 of each year after 1976, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this title is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 704.

§ 708. Effective date

This title takes effect upon the expiration of one year after the date of its enactment. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 shall take effect on the date of enactment thereof and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act shall take effect 12 months after the date of enactment.

§ 709. Short title

This title may be cited as the "Equal Credit Opportunity Act."

APPENDIX A

FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks

Comptroller of the Currency
Consumer Affairs Division
Washington, D.C. 20219

State Member Banks

Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board

Director, Bureau of Enforcement
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428

Creditors Subject to Interstate Commerce Commission

Office of Proceedings
Interstate Commerce Commission
Washington, D.C. 20523

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Brokers and Dealers

Securities and Exchange Commission
Washington, D.C. 20549

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations

Farm Credit Administration
490 L'Enfant Plaza, S.W.
Washington, D.C. 20578

Retail, Department Stores, Consumer Finance Companies, All Other Creditors, and All Nonbank Credit Card Issuers

(Creditors operating on a local or regional basis should use the address of the FTC Regional Office in which they operate.)
Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

APPENDIX B

MODEL APPLICATION FORMS

This Appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecured transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property or occurring in community property States; and the fifth for use in secured residential real estate transactions. The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.

The forms contained in this Appendix are models; their use by creditors is optional. In all instances, the use or modification of these forms is governed by section 202.5(e) of this Part and the directions contained in this Appendix.

In addition to deleting any information request printed on the forms or rearranging their format, as specified in section 202.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

(1) an inquiry about the names in which an applicant has previously received credit as authorized in section 202.5(c)(3);

(2) a request to designate a courtesy title as authorized in section 202.5(d)(3); or

(3) an inquiry about an applicant's permanent residence and United States immigration status as authorized by section 202.5(d)(5).

The fifth form contained in this Appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 (Rev. 3/77) form, except for type face and the inclusion on the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form FHLMC 65/FNMA 1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with subsections (c) and (d) of section 202.5 of this Part.

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check
Appropriate
Box

- ☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.
- ☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information in B about the joint applicant or user.
- ☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): _____ Birthdate: / /
 Present Street Address: _____ Years there: _____
 City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Previous Street Address: _____ Years there: _____
 City: _____ State: _____ Zip: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
 Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
 Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? _____ When? _____ Office: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): _____ Birthdate: / /
 Relationship to Applicant (if any): _____
 Present Street Address: _____ Years there: _____
 City: _____ State: _____ Zip: _____ Telephone: _____
 Social Security No.: _____ Driver's License No.: _____
 Present Employer: _____ Years there: _____ Telephone: _____
 Position or title: _____ Name of supervisor: _____
 Employer's Address: _____
 Previous Employer: _____ Years there: _____
 Previous Employer's Address: _____
 Present net salary or commission: \$ _____ per _____ No. Dependents: _____ Ages: _____
 Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
 Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ _____ per _____ Source(s) of other income: _____

Is any income listed in this Section likely to be reduced in the next two years?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with Joint Applicant, User, or Other Party: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION C—MARITAL STATUS (Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
 Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

ION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	<input type="checkbox"/> Rent Payment <input type="checkbox"/> Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
4.						
5.						
6.						
Total Debts			\$	\$	\$	

(Credit References)

	Date Paid
1.	\$
2.	

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Amount \$	If "yes" to whom owed?
Have you been declared bankrupt in the last 14 years?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes" where?	Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date
-----------------------	------	---------------------------------------	------

CREDIT APPLICATION**IMPORTANT: Read these Directions before completing this Application.**Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

Amount Requested Payment Date Desired Proceeds of Credit

\$..... To be Used For.....

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: \$ per No Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us?

When?

Office:

Checking Account No.

Institution and Branch:

Savings Account No.

Institution and Branch:

Name of nearest relative
not living with you:

Telephone:

Relationship:

Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: \$ per No Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.:

Institution and Branch:

Savings Account No.:

Institution and Branch:

Name of nearest relative not living with Joint
Applicant or Other Party:

Relationship:

Address:

SECTION C—MARITAL STATUSApplicant: ☐ Married☐ Separated☐ Unmarried (including single, divorced, and widowed)Other Party: ☐ Married☐ Separated☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	<input type="checkbox"/> Rent Payment <input type="checkbox"/> Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
			\$	\$	\$	
Total Debts						

(Credit References)

	Date Paid
1.	\$
2.	

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes" for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Amount \$	If "yes" to whom owed?
Have you been declared bankrupt in the last 14 years?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes" where?	Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

.....

and list names and addresses of all co-owners of the property:

Name	Address
.....
.....

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date
-----------------------	------	---------------------------------------	------

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
- ☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested	Payment Date Desired	Proceeds of Credit
\$.....		To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: \$ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.)

☐ No

Have you ever received credit from us? When? Office:

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with you: Telephone:

Relationship: Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: \$ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.)

☐ No

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with Joint Applicant or Other Party: Telephone:

Relationship: Address:

SECTION C—MARITAL STATUS

(Do not complete if this is an application for individual unsecured credit.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
 Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	<input type="checkbox"/> Rent Payment <input type="checkbox"/> Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
Total Debts			\$	\$	\$	

(Credit References)

Date Paid

1.	\$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "Yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount \$ If "Yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "Yes," where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature _____ Date _____ Other Signature (Where Applicable) _____ Date _____

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check
Appropriate
Box

- ☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.
- ☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested	Payment Date Desired	Proceeds of Credit
\$.....		To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /
Present Street Address Years there:
City: State: Zip: Telephone:
Social Security No.: Driver's License No.:
Previous Street Address: Years there:
City: State: Zip:
Present Employer: Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: \$ per No. Dependents: Ages:
Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? When? Office:
Checking Account No.: Institution and Branch:
Savings Account No.: Institution and Branch:
Name of nearest relative not living with you Telephone:
Relationship: Address:

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /
Relationship to Applicant (if any): Years there:
Present Street Address:
City: State: Zip: Telephone:
Social Security No.: Driver's License No.:
Present Employer: Years there: Telephone:
Position or title: Name of supervisor:
Employer's Address:
Previous Employer: Years there:
Previous Employer's Address:
Present net salary or commission: \$ per No. Dependents: Ages:
Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.
Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐
Other income: \$ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off?

☐ Yes (plain in detail on a separate sheet.) ☐ No

Checking Account No.: Institution and Branch:
Savings Account No.: Institution and Branch:
Name of nearest relative not living with Telephone:
Spouse, Joint Applicant, User, or other Party:
Relationship: Address:

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
 Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	\$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	\$		

OUTSTANDING DEBTS (Include charge accounts, instalment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	<input type="checkbox"/> Rent Payment <input type="checkbox"/> Mortgage		\$ (Omit rent)	\$ (Omit rent)	\$	
2.						
3.						
Total Debts			\$	\$	\$	

(Credit References)

Date Paid

1.	\$	
2.		

Are you a co-maker, endorser, or guarantor on any loan or contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes," for whom?	To whom?
Are there any unsatisfied judgments against you?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Amount \$	If "yes," to whom owed?
Have you been declared bankrupt in the last 14 years	Yes <input type="checkbox"/> No <input type="checkbox"/>	If "yes," where?	Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name	Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date
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RESIDENTIAL LOAN APPLICATION

MORTGAGE APPLIED FOR	<input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>	Amount \$ _____	Interest Rate % _____	No. of Months _____	Monthly Payment Principal & Interest \$ _____	Escrow/Impounds (to be collected monthly) <input type="checkbox"/> Taxes <input type="checkbox"/> Hazard Ins. <input type="checkbox"/> Mig. Ins. <input type="checkbox"/>
Prepayment Option						

1. SUBJECT PROPERTY

Property Street Address _____	City _____	County _____	State _____	Zip _____	No. Units _____
Legal Description (Attach description if necessary) _____					
Purpose of Loan: <input type="checkbox"/> Purchase <input type="checkbox"/> Construction Permanent <input type="checkbox"/> Construction <input type="checkbox"/> Refinance <input type="checkbox"/> Other (Explain) _____					
Complete this line if Construction Permanent or Construction Loan 4(f)		Lot Value Data		ENTER TOTAL AS PURCHASE PRICE IN DETAILS OF PURCHASE	
Year Acquired _____	Original Cost \$ _____	Present Value (a) \$ _____	Cost of Improv (b) \$ _____	Total (a + b) \$ _____	
Complete this line if a Refinance Loan		Purpose of Refinance _____		Describe Improvements [] made [] to be made	
Year Acquired _____	Original Cost \$ _____	Ami Existing Liens _____	Cost: \$ _____		
Title Will Be Held In What Name(s) _____			Manner in Which Title Will Be Held _____		
Source of Down Payment and Settlement Charges _____					

This application is designed to be completed by the borrower(s) with the lender's assistance. The Co-Borrower Section and all other Co-Borrower questions must be completed and the appropriate boxes checked if ☐ another person will be jointly obligated with the Borrower on the loan, ☐ the Borrower is relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as a basis for repayment of the loan, or ☐ the Borrower is married and resides, or the property is located, in a community property state.

2. BORROWER

Name _____	Age _____	School _____	Yrs _____	
Present Address _____	No. Years _____	<input type="checkbox"/> Own <input type="checkbox"/> Rent		
Street _____				
City/State/Zip _____				
Former address if less than 2 years at present address _____				
Street _____				
City/State/Zip _____				
Years at former address _____				
Marital <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed				
Status <input type="checkbox"/> Unmarried (incl. single, divorced, widowed)				
Name and Address of Employer _____				
Years employed in this line of work or profession? _____ years				
Years on this job _____ years				
<input type="checkbox"/> Self Employed				
Position/Title _____ Type of Business _____				
Social Security Number _____ Home Phone _____ Business Phone _____				

3. CO-BORROWER

Name _____	Age _____	School _____	Yrs _____	
Present Address _____	No. Years _____	<input type="checkbox"/> Own <input type="checkbox"/> Rent		
Street _____				
City/State/Zip _____				
Former address if less than 2 years at present address _____				
Street _____				
City/State/Zip _____				
Years at former address _____				
Marital <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed				
Status <input type="checkbox"/> Unmarried (incl. single, divorced, widowed)				
Name and Address of Employer _____				
Years employed in this line of work or profession? _____ years				
Years on this job _____ years				
<input type="checkbox"/> Self Employed				
Position/Title _____ Type of Business _____				
Social Security Number _____ Home Phone _____ Business Phone _____				

4. GROSS MONTHLY INCOME

Item	Borrower	Co-Borrower	Total
Base Empl. Income	\$ _____	\$ _____	\$ _____
Overtime			
Bonuses			
Commissions			
Dividends/Interest			
Net Rental Income			
Other (Before completing, see notice under Describe Other Income below.)			
Total	\$ _____	\$ _____	\$ _____

5. MONTHLY HOUSING EXPENSE

	Present*	Proposed
Rent	\$ _____	\$ _____
First Mortgage (P&I)	\$ _____	\$ _____
Other Financing (P&I)		
Hazard Insurance		
Real Estate Taxes		
Mortgage Insurance		
Homeowner Assn. Dues		
Other		
Total Monthly Pmt	\$ _____	\$ _____
Utilities		
Total	\$ _____	\$ _____

6. DETAILS OF PURCHASE

a. Purchase Price	\$ _____
b. Total Closing Costs (Est.)	\$ _____
c. Pre Paid Escrows (Est.)	\$ _____
d. Total (a + b + c)	\$ _____
e. Amount of Mortgage	() _____
f. Other Financing	() _____
g. Present Equity in Lot	() _____
h. Amount of Cash Deposit	() _____
i. Closing Costs Paid by Seller	() _____
j. Cash Req'd For Closing (Est.)	\$ _____

7. DESCRIBE OTHER INCOME

B-Borrower <input type="checkbox"/> C-Co-Borrower <input type="checkbox"/>	NOTICE: * Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered as a basis for repaying this loan.	Monthly Amount \$ _____

8. IF EMPLOYED IN CURRENT POSITION FOR LESS THAN TWO YEARS COMPLETE THE FOLLOWING

B/C	Previous Employer/School	City/State	Type of Business	Position/Title	Dates From/To	Monthly Income

9. THESE QUESTIONS APPLY TO BOTH BORROWERS

<p>If a "yes" answer is given to a question in this column, explain on an attached sheet</p> <p>Borrower Yes No Co-Borrower Yes No</p> <p>Have you any outstanding judgments? _____</p> <p>In the last 14 years, have you been bankrupt? _____</p> <p>Have you had property foreclosed upon or given title of a deed in lieu thereof? _____</p> <p>Are you a co-maker or endorser on a note? _____</p> <p>Are you a party in a law suit? _____</p> <p>Are you obligated to pay alimony, child support, or separate maintenance? _____</p> <p>Is any part of the down payment borrowed? _____</p>	<p>Borrower Yes/No Co-Borrower Yes/No</p> <p>Do you have health and accident insurance? _____</p> <p>Do you have major medical coverage? _____</p> <p>Do you intend to occupy the property? _____</p> <p>Will this property be your primary residence? _____</p> <p>Have you previously owned a home? _____</p> <p>Sale price of previously owned home \$ _____</p>
--	---

* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis

☐ Completed Jointly ☐ Not Completed Jointly

11. LIABILITIES

STATEMENT OF ASSETS AND LIABILITIES

Description	Cash or Market Value	Creditor's Name, Address, Account Number	Acct. Name if Nri Borrower(s)	Mo. Pmt. and Mos left to pay	Unpaid Balance
Cash Deposit Toward Purchase Held By	\$	Instalment Debts (include "revolving" charge accounts)		\$ Pmt/Mos. /	\$
Checking and Savings Accounts (Names of Institutions/ Acct. Nos.)				/	
				/	
				/	
Stocks and Bonds (No./description)		Automobile Loans		/	
Life Insurance Net Cash Value <i>Face Amount (\$)</i>		Real Estate Loans		X	
SUBTOTAL LIQUID ASSETS \$					
Real Estate Owned (<i>Enter Market Value from Schedule of Real Estate Owned</i>)					
Vested Interest in Retirement Fund		Other Debt, Including Stock Pledges			
Net Worth of Business Owned (<i>Attach Financial Stat.</i>)					
Automobiles (Make and Year)					
Furniture and Personal Property		Alimony, Child Support, and Maintenance Payments (Owed To)			X
Other Assets (Itemize)					X
					X
		TOTAL MONTHLY PAYMENTS		\$	
A TOTAL ASSETS \$		NET WORTH (A minus B) \$		B TOTAL LIABILITIES \$	

Address of Property (Indicate S if Sold, P's if Pending Sale or R if Rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Taxes, Ins., Maintenance and Misc.	Net Rental Income
		\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
		\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
		\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
TOTALS		\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

[illegible]

AGREEMENT. The Undersigned certifies for the loan indicated in this application, to be secured by a first mortgage or deed of trust on the property described herein, and represents that the property will not be used for any illegal or restricted purpose and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The original or a copy of this application will be retained by the lender, even if the loan is not granted.

VOLUNTARY INFORMATION FOR GOVERNMENT MONITORING PURPOSES

BORROWER: I do not wish to furnish this information (initials)

CO-BORROWER: I do not wish to furnish this information (initials)

SEX ☐ Female ☒ Male

Race/National Origin

1. American Indian, Alaskan Native SEX ☐ Female ☐ Male

☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White
☐ (Other (specify))

Reverse

SUPPLEMENT I

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and section 202.11(e) of this Part.

(a) **Application.** Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR 262) for a determination that, under the laws of that State,¹ a class of credit transactions² within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than, those imposed under sections 701 and 702 of the Act,³ and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in subsection (b).

(b) **Supporting documents.** The application shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act, regarding the class of credit transactions within that State.

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar

to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and explaining why any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subsection (b)(1).

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) administrative enforcement of the State law referred to in subsection (b)(1) that is substantially similar to, or more extensive than, the enforcement provided under section 704 of the Act;

(ii) civil liability for a failure to comply with the requirements of the State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances substantially similar to those prescribed in section 706 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(iii) a statute of limitations that prescribes a period for civil actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) a scope of discovery relating to a creditor's credit granting standards under appropriate discovery procedures in a court action or agency proceeding that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subsection (b)(1), together with complete information regarding the fiscal arrangements for administrative enforcement (including

¹ Any reference to State law in this Supplement includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

² As applicable, references to "class of credit transactions" in this Supplement include one or more such classes of credit transactions.

³ Any reference in this Supplement to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of this Part, the Board's formal interpretations thereof, and official interpretations or approvals issued by an authorized official or employee of the Federal Reserve System. Additionally, any reference to sections 701 and 702 of the Act includes a reference to sections 705(a), (b), (c), and (d) of the Act and the corresponding provisions of this Part, which, though technically not a part of sections 701 and 702, implement and relate to substantive requirements of sections 701 and 702.

the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding Federally-chartered creditors.⁴ The statement should also include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) **Criteria for determination.** The Board will consider the criteria set forth below, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law to be substantially similar to, or provide greater protection to applicants than, the provisions of sections 701 and 702 of the Act, the provisions of State law⁵ at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702 of the Act.

(ii) Creditors provide all of the applicable notifications required by the provisions of sections 701 and 702 of the Act, with the content and in the terminology, form, and time periods prescribed by this Part pursuant to sections 701 and

702; however, required references to State law may be substituted for the references to Federal law required in this Part. Notification requirements under State law in additional circumstances or with additional detail that do not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702 of the Act.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to or more extensive than those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those provided by sections 701 and 702 of the Act under conditions or within time periods that are substantially similar to, or more favorable to applicants than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in subsection (b)(1) are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(i) administrative enforcement, including necessary facilities, personnel, and funding;

(ii) civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act;

(iii) a statute of limitations for civil liability of substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) a scope of discovery relating to a creditor's credit granting standards that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

⁴ Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless a State establishes to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

⁵ This subsection is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the Act.

(d) **Public notice of filing and proposed rule making.** In connection with any application that has been filed in accordance with the requirements of subsections (a) and (b) of this Supplement and following initial review of the application, a notice of such filing and proposed rule making shall be published by the Board in the *Federal Register*, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

(e) **Exemption from requirements.** If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the *Federal Register*, and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this Part. Any exemption granted shall be effective 90 days after the date of publication of such notice in the *Federal Register*.

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subsections (b)(1) and (b)(3). The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subsections (b)(2) and (b)(4). The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this Part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(f) **Adverse determination.** (1) If, after publication of a notice in the *Federal Register* as provided under section (d), the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the *Federal Register* a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

(g) **Revocation of exemption.** (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems

SUPPLEMENT I

appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the *Federal Register*. A period of time shall be allowed from the date of such publication for interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the *Federal Register*, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of sections 701 and 702 of the Act, 90 days after the date of publication of the notice in the *Federal Register*.

PART 1910 - General

Subpart A - Receiving and Processing Applications

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PART 1910 - GENERAL

SUBPART A - RECEIVING AND PROCESSING APPLICATIONS

§1910.1 General.

This subpart prescribes the policies and procedures for receiving and processing Section 502 and 504 Rural Housing (RH), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Operating (OL), Emergency (EM), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS) and Labor Housing (LH) loan and grant applications except as modified by program regulations. It also prescribes policies for informing applicants and other interested individuals about the services of the Farmers Home Administration (FmHA).

(a) The County Supervisor will provide information about FmHA services to all persons making inquiry about FmHA programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and other written statements.

(b) Wherever the term "applicant" appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

§1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, national origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as "ECOA prohibited bases." It is the policy of the Farmers Home Administration that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§1910.3 Receiving Applications.

Applications for FmHA assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

DISTRIBUTION: W, S, D, C

1

Applications
General

(4-23-86) SPECIAL PN

(a) All persons applying for FmHA assistance who are not indebted to FmHA must file a written application. Any person wishing to submit an application will be permitted to do so. No oral or written statement may be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA "prohibited basis." The filing of written applications will be encouraged even though funds may not be currently available, since complete applications will be considered in the order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410-4, "Application for Rural Housing Assistance (Non Farm Tract)," will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410-1, "Application for FmHA Services," will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945-22, "Certification of Disaster Losses."

(3) The Right to Financial Privacy Act of 1978, Title XI of P.L. 95-630, requires that:

(i) Except as specified in paragraph (a)(3)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the FmHA office will forward Form FmHA 410-7, "Notification to Applicant on Use of Financial Information," to those applicants.

(ii) For a rental housing or labor housing application filed by an individual or a partnership of five or fewer members, the FmHA office will comply with paragraph (a)(3)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(4) All individual loan applicants will sign Form FmHA 410-9, "Statement Required by the Privacy Act." A signed copy will remain with the application. No application is complete without a signed Form FmHA 410-9 on file.

(5) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications

filed for assistance to finance residential real estate when the loan is to be secured by a lien on the property. In those cases, FmHA will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(b) Requests by FmHA borrowers or previous borrowers for additional assistance from FmHA will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) Individuals (who are not business applicants) who have current Form FmHA 431-2, "Farm and Home Plan," Form FmHA 431-3, "Household Financial Statement and Budget," or Form FmHA 410-4, and who are presently indebted to FmHA, will be required to complete only the following items of Form FmHA 410-1 or Form FmHA 410-4:

- (i) Name.
- (ii) Social Security Number.
- (iii) Loan purpose.
- (iv) Planned income for next 12 months.
- (v) Date and signature of the application.

If other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA 410-1 or Form FmHA 410-4, as appropriate.

(3) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also complete Form FmHA 1945-22 in addition to the other required forms.

(c) County Office Assistants ordinarily will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA. An explanation of the types of assistance available should be given whenever it is not clear what type of loan or grant will meet the applicant's needs. The employee receiving the application will make sure that it is properly completed, dated, and signed, and will give whatever assistance necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination surname. Married persons may apply as individuals. In the case of a joint application, the persons requesting the assistance will designate who is listed as "applicant" and who is listed as

"co-applicant." When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others as required by program regulations needed to determine eligibility for the requested assistance. An applicant will also be required to provide information concerning a spouse or former spouse, who will not be a cosigner, or who is not a member of the household, when the applicant is relying on alimony, child support, or separate maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases information regarding the spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. Signature requirements on the Mortgage or Deed or Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA State Supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State Supplement. (Revised

(f) If a spouse's signature would be necessary for FmHA to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms "married," "unmarried" and "separated" may be used to designate marital status. "Unmarried" includes single, divorced, or widowed persons.

(g) FmHA may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of

such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA Instructions 1905-A and 2006-J which are available in all FmHA offices.

(i) For all loans and grants, the applicant must furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraph (i)(2) of this section.

(1) For individuals who are not business applicants, the SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA forms.

(2) For Community and Business and Industry program, T/A Self-Help, and other business applicants, a temporarily assigned number will be used initially for applicant identification for the purpose of obligating funds. This number will be assigned by the State Director from the block of borrower identification numbers assigned to each State by the Finance Office. The temporary number, preceded by the State and county code numbers, and followed by the project number, will constitute the borrower's case number to be used on all FmHA forms. The temporary number must be replaced by the taxpayer's identification number prior to loan closing/issuance of loan note guarantee, by submitting Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," to the Finance Office. In replacing the temporary number, follow the format shown in Item 1 of the Form Manual Insert (FMI) for Form FmHA 1940-1, "Request for Obligation of Funds," to complete the borrower's case number.

(3) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA Instruction 2033-A, "Management of County Office Records," (available in any FmHA office).

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled "Settlement Costs"

will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA 440-58, "Estimate of Settlement Costs," will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA 440-58 will be kept in the running record section of the applicant/borrower County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes and subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA 1940-41, "Truth in Lending Disclosure Statement," completed using "good-faith" estimates, will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

(l) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of Subpart A of Part 1910 of this chapter (available in any FmHA office) will be collected from the loan applicants before credit reports are ordered, except in the case of Section 504 loan applicants and Section 502 Rural Housing loan applicants whose requested loan will likely not exceed \$7,500. It is the policy not to order credit reports for Rural Housing loans of \$7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in §1910.53(g) of Subpart B of Part 1910 of this chapter.

§1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA. In the processing of applications for Farm Ownership, Farm Operating and Soil and Water loans received from family size operators, the County Supervisor may recommend the applicant for the additional services of the "New Full-time Family Farmer and Rancher Development Committee." See Exhibit A of Subpart B of Part 1924 of this chapter for the policies governing those additional services. If a farm is situated in more than one State, County or parish, the loan will be processed in the State, County or parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office.

(a) Completed applications. Applications for which all information necessary to determine eligibility has been received, will be processed in the order received except as modified by veteran's preference policies. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

- (1) County Office records.
- (2) Form FmHA 410-4.
- (3) Credit reports as provided in Subparts B and C of Part 1910 (Subpart C available in any FmHA Office.)
- (4) Personal contacts.
- (5) Visits of supervisory personnel to the applicant's residence or business.
- (6) Form FmHA 410-8, "Applicant Reference Letter," to informed sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the related application, Form FmHA 1910-1 or Form FmHA 410-4, as appropriate.

(1) Form FmHA 410-8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of P.L. 95-630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual or a partnership of 5 or fewer members. When not using Form FmHA 410-8, the notification will read as follows: (Added 8-8-79, PN 686.)

"I certify that the United States Department of Agriculture, acting through the National Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978", Public Law 95-630 in seeking financial information regarding _____.
(applicant)"

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Office of Equal Opportunity (OEO)) without express approval of the Office of General Counsel (OGC). (Added 8-8-79, PN 686.)

(7) Form FmHA 1910-5, "Request for Verification of Employment." This form may be used to verify employment and income. (Revised 4-24-85, PN 962.)

(b) Notifying applicant and borrower about Limited Resource loans.

Immediately after a completed application for OL, FO, SW, EE or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924-B-1 to the applicant telling the applicant about Limited Resource Loans. (Revised 4-23-84, SPECIAL PN.)

(c) Determining eligibility. The County Committee will be used to determine eligibility of RH applicants who are also applying for a Farmer Program loan, or who are already indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for eligibility. The County Supervisor must obtain and present to the County Committee sufficient information concerning an applicant for the Committee to determine eligibility for the type of assistance requested. (Renumbered 4-23-84, SPECIAL PN.)

(d) County Committee actions. All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal

(a) Incomplete applications. Applicants who submit incomplete applications for EM, FO, OL and SW loans will be sent a letter within 20 working days after receipt of their applications. The letter will state clearly the additional information needed, and that the application cannot be processed until all required information is received in the FmHA County Office.

(b) Completed applications. Completed applications are those for which all information necessary to determine eligibility has been received, and they will be processed in the order received, except as modified by veteran's preference policies. The County Supervisor will verify the information furnished by the applicant and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Information may be obtained and verified by:

- (1) County Office records.
- (2) Form FmHA 410-4.
- (3) Credit reports as provided in Subparts B and C of Part 1910 of this chapter (Subpart C available in any FmHA office).
- (4) Personal contacts.
- (5) Visits of supervisory personnel to the applicant's residence or business.
- (6) Form FmHA 410-8, "Applicant Reference Letter," to inform sources such as creditors, bankers, merchants, employers, and landlords. The information obtained as a result of personal inquiries and observations will be recorded in the running record. The information obtained by correspondence will be attached to the related application, Form FmHA 410-1 or Form FmHA 410-4, as appropriate.
 - (i) Form FmHA 410-8 includes printed notification to financial institutions that FmHA is in compliance with the Right to Financial Privacy Act of 1978, Title XI of P.L. 95-630. This notification must be given to any financial institution to which FmHA makes a direct request for financial records regarding an applicant who is an individual a joint operation, or a partnership of 5 or fewer members. When not using Form FmHA 410-8, the notification will read as follows:

"I certify that the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, "The Right to Financial Privacy Act of 1978," Public Law 95-630 in seeking financial information regarding _____.
(applicant)

Date

County Supervisor

(ii) Under no circumstances may financial information obtained under this regulation be disseminated to any other department or agency of the Federal Government (other than the Office of the Inspector General (OIG) or the Department's Office of Advocacy and Enterprise (OAE)) without express approval of the Office of General Counsel (OGC).

(7) Form FmHA 1910-5, "Request for Verification of Employment." This form may be used to verify employment and income.

(c) Notifying applicants (including presently indebted borrowers) about Limited Resource loans. Immediately after a completed application for OL, FO, SW or EM assistance is received, and prior to County Committee action, the County Supervisor will send a letter similar to FmHA Guide Letter No. 1924-B-1 to the applicant telling the applicant about Limited Resource loans.

(d) Determining eligibility. The County Committee will be used to determine eligibility of RH applicants who are also applying for a Farmer Program loan, or who are already indebted for a Farmer Program loan. The County Supervisor will determine eligibility for all other RH applicants. All farmer program applications are to be submitted to the County Committee for eligibility. The County Supervisor must

concerning an applicant for the Committee to determine eligibility for the type of assistance requested.

(e) County Committee actions. All actions by the Committee regarding applicant eligibility will be taken in Committee meetings attended by at least two Committee members. If the County Committee is unable to reach a decision based on the information available, they may request the County Supervisor to obtain further information or may request a personal interview with the applicant. The County Committee will act on the application after considering all pertinent information. This action will be taken in the absence of the applicant. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations.

(f) Timeliness. Written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a completed application; and for Farmer Program loan applications, each application must be approved or disapproved and the applicant notified, in writing, of the action taken, not later than 60 days after receipt of a completed application. If an application is disapproved, the applicant will be given appeal rights for any decision that is appealable under Subpart B of Part 1900 of this chapter. If a determination of eligibility cannot be made within 30 days from the date of receipt of the completed application, the applicant will be notified, in writing, of the circumstances causing the delay, and the approximate time needed to make a decision. The letter will contain the ECOA paragraph set forth in §1910.6(b)(1) of this subpart.

(g) Recording action taken. The County Committee minutes or the running case record (whichever is appropriate) will show what action was taken on each application. The specific reason(s) for unfavorable decisions of eligibility on applications will be shown on the Committee Certifications. In those cases not involving County Committee action, this information will be recorded in the running case record.

(h) Active applications. An applicant may voluntarily withdraw an application at any time. When an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a notice within 30 days that further consideration is desired. The letter will contain the ECOA paragraph set forth in §1910.6(b)(1) of this subpart. Applications for FO, SW, OL, RL, RH, RRH, RCH, RHS, and LH loans received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed. However, an expiring application for which a loan has been approved, but not closed, will be considered active until the loan is closed or canceled. All withdrawn or rejected applications will be retained in an inactive file for 25 months after the date of withdrawal or notice of adverse action. If notice has been received by FmHA that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

§1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) Age of applicant. When evaluating the application, the age of the applicant will not be used as a consideration of eligibility (provided the applicant has reached the legal age of majority in the State, or has had the disability of minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) Credit history. Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) Creditworthiness. When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history.

(1) Foreclosures, judgments, or delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent bankruptcy, foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Bankruptcies must never be used as an indication of unacceptable credit history. However, non-payment of a debt may be used as an indication of unacceptable credit history, in accordance with §1910.5(c)(1), above.

§1910.6 Notification of applicant.

The time frames established in §1910.4(f) of this subpart must be met.

(a) Favorable decision. If the decision of eligibility is favorable, the County Supervisor will notify the applicant immediately, and then will proceed promptly to process the loan in accordance with the applicable regulations. Care should be exercised to be sure that the applicant understands that a decision of eligibility does not constitute approval of the loan. In notifying the applicant of a favorable decision of eligibility the County Supervisor will, when practicable, arrange a meeting with the applicant to proceed with developing the loan docket. When the applicant has been determined eligible for assistance and additional information becomes available that indicates the original determination may be in error, the application will be reconsidered taking the new information into account. If, after reconsideration, the applicant is rejected, adverse action has occurred, and proper notification will be sent.

(b) Unfavorable decision.

(1) The County Supervisor will immediately notify the applicant in writing of the adverse decision whether made by the County Supervisor or the County Committee. A statement will be made giving specific reasons for the denial. In all cases, applicants will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

"The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicants has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580."

(2) If the County Committee determines that the applicant is not eligible, Form FmHA 440-2, "County Committee Certification or Recommendation" will be completed by giving the specific reasons for the rejection in the blank space immediately above the space for the signatures of the County Committee members. The form will be dated and the County Committee members will sign in the space provided.

(3) If a decision to deny an EM, OL, FO, or SW loan(s) is overturned or modified in the appeal process or by a court, the case will be returned to the local FmHA County Supervisor for further processing. The County Supervisor or the County Committee must take action within 15 days, as set out in §1900.59(c) of Subpart B of Part 1900 of this chapter.

(c) Available funds. After EM, OL, FO and SW loans are approved, loan funds will be made available to the applicants within the time frames established in the loan making regulations.

(d) Lack of funds. Applications received when funds are not available will be processed and a decision on eligibility will be made. Applicants who are ineligible will be so advised, in accordance with §1910.6(b)(1) of this subpart. If no funds are available within 15 days of loan approval, eligible applicants will be notified that their applications will be held until funds are available. When funds become available for the requested loan, eligible applicants will be notified immediately by letter. Funds must be provided to the applicant within 15 days of when they become available unless the applicant agrees to a longer period. The letter should tell the applicant to notify the County Office immediately if the applicant is still interested in obtaining the assistance originally applied for. If the applicant does not respond within 10 days of the date of the first letter, a second notice will be sent requesting the applicant to contact the County Office within 15 days or the application will be considered withdrawn. The letter will contain the ECOA Notice set forth in §1910.6(b)(1) of this subpart. If the applicant indicates a desire to obtain assistance, the County Supervisor will review the application with the applicant and, if there have been any significant changes that would affect a eligibility, the County Supervisor will obtain necessary current information to determine eligibility, or when appropriate, present the application to the County Committee for reconsideration. If, after reconsideration, the application is rejected, adverse action has occurred, and proper notification will be sent as outlined in §1910.6(b)(1) of this subpart.

(e) Credit report. If a loan is refused because of information provided by a credit report, the County Supervisor will also:

(1) State the reason as being information received in the credit report and cite the specific information given in the credit report that led to the rejection (e.g. delinquent obligations, tax lien, or judgments).

(2) Provide the name and address of the credit reporting company.

(3) Inform the applicant that a copy of the Credit Report may be obtained from FmHA if requested by the applicant, but that any

dispute regarding the accuracy of the information in the credit report must be resolved between the Credit Reporting Company and the applicant.

(f) Other credit references. When denial is based on information obtained from a source other than a Credit Reporting Company, the applicant will be advised that denial is based on information from other than a Credit Reporting Company, and that upon written request, the nature of that information will be disclosed.

§1910.7 Counseling.

(a) Budgets. When it appears that an RH non-farm applicant has insufficient income, based on the abbreviated budget section of the application form, the County Supervisor should invite the applicant to return to the County Office to complete Form FmHA 431-3. There should be enough income to repay the requested loan, pay other debts, and pay planned household and other expenses. Joint completion of the budget by the applicant and County Supervisor should provide the opportunity for the applicant to fully explain how household income is managed.

(b) Farm and Home Plan. When information on Form FmHA 410-1 or the Farm and Home Plan indicates that the applicant has insufficient income to repay the requested loan, pay other debts and provide a reasonable standard of living, alternative plans of farm operation will be considered to attempt to overcome the problem.

(c) Applicant/Supervisor understanding. When discussing the reasons for the applicant's failure to qualify, the County Supervisor will:

- (1) Be sympathetic.
- (2) Try to help the applicant work out the problem.
- (3) Give a full explanation for the rejection and provide full opportunity for further discussion.
- (4) Offer suitable alternatives when applicable.

§1910.8 Reaching an understanding.

A proper understanding will be obtained with all applicants with respect to the basic loan making and servicing policies, their responsibilities, and the benefits that may be expected from FmHA assistance. The applicants should be given adequate time to make all necessary basic decisions. Proper understandings may be reached with applicants through:

(a) Individual interviews with County Office personnel. The process of arriving at an understanding will begin on the occasion of the first interview with the applicant. The applicant will be given an attentive and sympathetic hearing with ample time to discuss fully all problems and needs. County Office personnel will explain clearly whether and how these needs may be met through the services of FmHA. If necessary, arrangements will be made for subsequent discussions until the County Supervisor is satisfied the applicant has obtained a proper understanding.

(b) Applicant interviews with the County Committee. An applicant requesting an opportunity to appear before the County Committee to discuss any questions relating to the application or the FmHA program will be permitted to do so.

(c) Group meetings. An effective method of assisting applicants to obtain a proper understanding of the FmHA program is through group meetings. Effective group meetings can be held with three or more applicants. Through group meetings applicants get the benefit of explanations given to questions raised by others. Requirements can be presented more impersonally, and generally are more acceptable when applicants know that all borrowers must meet the same requirements. Group participants will be informed that matters of personal or confidential nature will not be discussed publicly, and that any such questions will be answered during individual interviews.

(d) Items to be discussed. Before loans are made, County Supervisors will make every effort to see that an understanding is reached with the applicant on the following points as they apply to the type of assistance involved:

- (1) Farm and Home Planning.
- (2) Budgeting.
- (3) Record keeping.
- (4) FmHA visits.
- (5) Analysis of income and expenses.
- (6) Supervised bank accounts.

- (7) Planning and performing development work.
- (8) Use of funds.
- (9) Security requirements.
- (10) Care and maintenance of security.
- (11) Accounting for security property.
- (12) Repayment of loans.
- (13) Interest credits and recapture.
- (14) Moratorium.
- (15) Graduating to other credit sources.
- (16) Direct payment to the Finance Office, when applicable.
- (17) Appeal procedure.

(e) Use of Form FmHA 1924-14, "Notice Farmer Program Borrower Servicing Options, Including Deferral and Borrower Responsibilities." Before or at loan closing, all FO, OL, SW, and EM applicants for initial or subsequent loans will have Form FmHA 1924-14 reviewed with them by the County Supervisor. In addition to some of the items listed in paragraph (d) of this section, Form FmHA 1924-14 explains servicing options that are available to the borrower, including deferral, and the limited resource program. Form FmHA 1924-14 will be signed and distributed in accordance with the FMI.

§1910.9 Supplemental material to be provided by State Offices:

To further assist County Supervisors receive and process applications, the State Office may supplement this subpart with materials and information adapted to State and local conditions. Examples of the types of information that can be used effectively for the guidance of the County Supervisors are:

- (a) Guides and suggestions for holding group meetings of applicants.
- (b) Illustrative material for use in explaining the FmHA program to individuals and groups.
- (c) Information on State statutes concerning community property or dower and curtesy rights, and how these laws affect loan programs and security requirements.
- (d) Outreach material.

§1910.10 Veteran's preference.

(a) Farm loans. Veteran's preference will be extended to any person applying for an FO, SW, RL, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces: (1) during the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941, through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955, or (4) for a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(b) RH loans. Veteran's preference will be extended to any person applying for an RH loan who would qualify for such preference under paragraph (a) of this section. Such preference will also be extended to the spouses and children of deceased servicemen who died in service during one of the periods described in paragraph (a) of this section.

(c) Applying Veteran's preference. Veteran's preference will apply when:

- (1) There is a shortage of funds.
- (2) Obligating forms are ready to be submitted to the Finance Office, and
- (3) There is more than one application having the same date.

§1910.11 Special requirements.

(a) Serviceman's Readjustment Act of 1944. Section 512(a)(D) of the Serviceman's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Veterans Administration (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Veterans Administration Loan Guaranty Officers may, therefore, require VA loan applicants to apply to FmHA for loan assistance.

(b) Veterans determined ineligible for FmHA. If the veteran is unable to obtain a loan from the FmHA, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by FmHA of the veteran's application, and the specific reasons for rejection.

§§1910.12 - 1910.50 [Reserved]

IV. TITLE VIII (FAIR HOUSING)

TITLE VIII - CIVIL RIGHTS ACT OF 1968
(Fair Housing)

- I. POLICY
- II. DEFINITIONS
 - A. Person
 - B. Family
- III. COVERAGE
 - A. Pertains to Dwellings or Facilities
 - B. Applies to persons renting or sellings dwellings
- IV. DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING OR LOTS
- V. DISCRIMINATION IN THE FINANCING OF HOUSING
- VI. DISCRIMINATION IN PROVISION OF BROKERAGE SERVICES
- VII. EXEMPTION
- VIII. OTHER SECTIONS OF THE ACT
 - A. Jurisdiction over Complaints of Discrimination
- IX. SANCTIONS

CLASS ACTIVITIES

Review sample Report of Investigation; discussion of report
will follow review.

FmHA AFFIRMATIVE ACTION

(FAIR HOUSING)

- I. FmHA FAIR HOUSING POLICY
- II. REQUIREMENTS: WHO MUST COMPLY
 - A. SUBDIVISION DEVELOPERS
 - B. MULTIPLE FAMILY PROJECTS
 - C. CONDITIONAL COMMITMENT BUILDERS
 - D. REAL ESTATE BROKER
 - E. FmHA - ACQUIRED PROPERTIES
- III. REQUIREMENTS OF THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN
 - A. OUTREACH
 - B. ADVERTISING
 - MUST DO
 - (1) DISPLAY FAIR HOUSING POSTER
 - (2) DISPLAY FAIR HOUSING SIGN ON CONSTRUCTION SITE
 - (3) OPTIONAL TYPES
 - (a) COMMERCIAL MEDIA
 - (b) BROCHURES, LEAFLETS, AND OTHER HANDOUTS
 - (c) COMMUNITY CONTACTS
 - C. ANTICIPATED OCCUPANCY RESULTS - (projections)
 - D. NONDISCRIMINATORY HIRING POLICY
 - E. TRAINING OF STAFF
- IV. WHAT IS NONCOMPLIANCE WITH THE AFHM PLAN?
- VII. COMPLIANCE AND ENFORCEMENT OF AFHM PLAN
 - A. PREOCCUPANCY CONFERENCE
 - B. MONITORING

1. WHAT TO DO IF PARTICIPANT IS BELIEVED TO BE IN NONCOMPLIANCE

(a) COMPLIANCE MEETING

(1) CORRECTIVE ACTION NEEDED

(b) COMPLIANCE REVIEW

VIII. SANCTIONS

CLASS ACTIVITIES

1. Review Sample Affirmative Fair Housing Marketing Plans
2. Role Plays



TITLE VIII - CIVIL RIGHTS ACT OF 1968
(Fair Housing)

I. POLICY

IT IS THE POLICY OF THE UNITED STATES TO PROVIDE, WITHIN
CONSTITUTIONAL LIMITATIONS, FOR FAIR HOUSING THROUGHOUT THE UNITED
STATES.

PROHIBITS DISCRIMINATION IN THE SALE, RENTAL OR FINANCING OF
HOUSING, ON THE BASIS OF RACE, COLOR, RELIGION, SEX, AND NATIONAL
ORIGIN.

II. DEFINITIONS

(A) Person - means one or more individuals, corporations,
partnerships, associations, labor organizations, legal
representatives, mutual companies, joint-stock companies,
trusts, unincorporated organizations, trustees, trustees in
bankruptcy, receivers and fiduciaries

(B) Family - includes a single person

III. COVERAGE

(A) Pertains to Dwelling or Facilities

- (1) Owned or operated by the Government (pertains to disposition of FmHA acquired property)
- (2) Financed with loans or grants by the Government
- (3) Insured, guaranteed, or secured by the Government
- (4) Provided by the development or redevelopment or real property purchased or leased from a State or local public agency receiving financial assistance from the Federal Government

(B) Applies to persons renting or selling dwellings

- (1) Owner of dwelling intended for occupancy by five or more families
- (2) Person who has rented or sold three or more dwellings in the past year
- (3) Person who was sales or rental agent in two or more transactions in the past year

IV. NONDISCRIMINATION IN THE SALE OR RENTAL OF HOUSING OR LOTS

- (A) FmHA employees, borrowers or other persons with whom FmHA does business may not because of race, color, sex, religion, or national origin:

- (1) Refuse to sell or rent after making a bonafide offer
- (2) Discriminate in terms, conditions, or privileges or sales or rental of dwelling. (A minority may not be required to pay higher rent or make larger down payments than nonminorities).
- (3) Indicate through advertising any preferences or limitations
- (4) Indicate to a person that a dwelling or site is unavailable when it really is available

(B) Other prohibitions include:

- (5) A packager may not refuse to package an RH loan application
- (6) An FmHA employee developer, or other participant, may not direct persons of similar race, color, religion or national origin to one particular area populated by such persons, when housing is available in other areas

V. DISCRIMINATION IN THE FINANCING OF HOUSING

- (A) FmHA employees may not on the basis of race, color, religion, sex and national origin:

- (1) Deny a loan or grant to an applicant

(2) Discriminate in determining

(a) rate of interest

(b) amount of loan (Smaller loan amounts should not be approved for minority applicants, with similar incomes debt structure, family size, as whites, who might received larger amounts of loans approved).

(c) other terms and conditions

Note:

The various servicing authorities in housing program regulations should not be used to the detriment of an applicant because of race, color, religion, sex, and national origin.

VI. DISCRIMINATION IN PROVISION OF BROKERAGE SERVICES

FmHA will not discriminate against any person engaged in the business of selling or renting dwellings, in providing a listing of FmHA acquired properties to be sold because of race, color, religion, sex, or national origin.

VII. EXEMPTION

Nothing in Title VIII shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates, for other than a commercial purpose, to persons of the same religion, or from giving preference to such persons unless membership in such religion is restricted on account of race, color or national origin.

VIII OTHER SECTIONS OF THE ACT

Administration, education and conciliation and enforcement authority of the Act was given to the Secretary of the Department of Housing and Urban Development

(a) Complaints of Discrimination

Complaints of housing discrimination should be filed with the Secretary of HUD. The Secretary's responsibility includes investigation and resolution of the complaint. Any complaint that is not resolved to the satisfaction of the complainant can be filed in any court by the complainant

XI. SANCTIONS

Failure of a participant to comply with the requirements of Title VIII of the Civil Rights Act of 1968 or FmHA Instruction 1901-E on this part, will result in denial of further participation in FmHA programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

FmHA AFFIRMATIVE ACTION

I. FmHA FAIR HOUSING POLICY

It is the policy of FmHA to administer its housing program affirmatively so that all individuals in the housing market area will have housing choices available to them regardless of race color, religion, sex, or national origin.

Each participant in an FmHA housing program, shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining eligibility, and in concluding sales and rental transactions.

II. REQUIREMENTS

The Affirmative Fair Housing Marketing Plan (AFHM Plan) HUD Form 935.2 will be prepared by the following

(A) Subdivision Developers

Participants requesting approval for five or more sites.

-Plan will be in effect until all lots are sold.

(B) Multi-Family Projects

Projects with five or more units.

Includes TA grants assisting five or more families.

-Plan will be in effect from time of application until loan is paid in full, or as long as project is used for same purpose that the loan is made.

(C) Conditional Commitment Builder

Builders who receive five or more conditional commitments for single family dwelling units in a 12-month period.

-Plan will be in effect 1 year.

(D) Real Estate Broker

A Broker or agent that agrees to list acquired rural housing properties on a term basis or who agrees to list five or more such properties on an individual listing basis.

-The plan will be in effect 1 year.

(E) FmHA County Office

An AFHM plan will be developed for acquired properties managed and offered for sale.

III. REQUIREMENTS OF THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN

- A. OUTREACH - Participant must reach buyers and tenants who would not be expected to apply for such housing.
- B. ADVERTISING - Participants must make an effort to publicize the availability of housing opportunities to minorities or other groups needing special outreach. The use of minority medias, including foreign language publications and broadcasts should be encouraged by FmHA in areas with concentrations of non-English speaking residents.
- (a) Participant MUST display "Fair Housing Poster."
- (b) Participant MUST display on construction site and other properties a FAIR HOUSING SIGN that contains Fair Housing statement or Logotype.

FAIR HOUSING STATEMENT

"We are pledged to the letter and spirit of U.S. Policy for achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin."

(c) OPTIONAL TYPES OF ADVERTISING

(1) Commercial Media

- (a) Radio
- (b) TV
- (c) Billboards
- (d) Newspapers and other publications reaching
minority areas

- (2) Brochures/Leaflets and other handouts - This type of advertising should also be written in the appropriate foreign language in areas with a high concentration of non-English speaking residents.

(3) Community Contacts

Example:

- (a) NAACP
- (b) State Social Agencies
- (c) Minority Leaders
- (d) Others

C. ANTICIPATED RESULTS

Participants must realistically project number of units to be occupied by each race/ethnic group. Numbers must reflect projections from the eligible population for that particular area of the project location.

D. NONDISCRIMINATORY HIRING POLICY

Participant must undertake and maintain nondiscriminatory hiring policy in recruiting for staff in sales or rental of property.

E. TRAINING OF STAFF

Participants must train employees who sale or rent properties in the policy and application of nondiscrimination and fair housing.

IV. PUBLIC REVIEW

Approved Affirmative Housing Marketing Plans will be made available by the participant for public inspection and for review by EO Staff and USDA-OEO.

V. AFHM PLAN REVIEW AND APPROVAL

Plans will be reviewed, approved, and signed by the official authorized to approve the assistance requested.

County Supervisor will review and submit with comments, those plans where amount of assistance exceeds his approval authority.

IV. WHAT IS NONCOMPLIANCE WITH THE AFHM PLAN?

Examples of noncompliance with the AFHMP as follows:

- (1) Indications that participant has not conducted outreach or made community contacts.
- (2) Participant did not advertise to the racial group less likely to apply for the available housing.
 - (a) Participant did not submit to the FmHA office copies of advertisement or letters to community leaders that were listed on the plan.

- (3) There are indications that the FmHA approved housing (subdivision) or rental project will be occupied by people of one race, when statistics indicate mixed-racial population.
- (4) Hiring policy appears to be limited, few minorities are employed by participant, even though the minority population is relatively high.
- (5) There are indications that participant's sales/rental employees may not have been trained in the policy of fair housing. Complaints and other information regarding poor treatment of applicants or other people in need of housing assistance may reach the FmHA office.

VII. COMPLIANCE AND ENFORCEMENT OF PLAN

FmHA will enforce compliance of the AFHM Plan through the following:

- A. Preoccupancy Conference - The previously approved AFHM Plan is reviewed with participant to determine if plan or proposed implementation of plan requires modification prior to initiation of marketing, in order to achieve the objectives of the AFHM regulation and the plan.

Monitoring - Appropriate county or district office personnel will monitor project according to requirements of FmHA Instruction 1901-E as revised.

1. WHAT TO DO IF A PARTICIPANT IS BELIEVED TO BE IN NONCOMPLAINE

- (a) Compliance Meeting - A compliance meeting is to be scheduled when there is an indication that the goals of the AFHM plan may not be achieved or if the plan needs to be modified.

The participant is required to bring to the meeting documentation to show how the AFHM plan is being implemented and other appropriate evidence.

- (1) Corrective Action Needed - After the compliance meeting, if it is evident that corrections to the plan or other corrective action is needed to be taken by the participant and the participant refuses, the matter should be referred to the National Office, Director, Equal Opportunity Staff.

The Director of Equal Opportunity will decide based on severity of the matter, the course of action to follow and who will do the required compliance review.

- (b) Compliance Review - A Compliance Review will be made to determine whether or not the applicant is in compliance with AFHM requirements, Title VIII and FmHA Instruction 1901-E.

1. EXAMPLES OF WHAT TO REVIEW:

- a. Participant's sales and rental practices
- b. Programs to attract minority and majority renters of both sexes.
- c. Data on the size and location of unit, services provided, prices and rental ranges, and race and sex of buyers, tenants and rental and sales staff.

- d. Other matters relating to marketing sales and rental of dwellings under affirmative marketing requirements (Advertisements).

Following a compliance review, a report will be prepared indicating whether a finding of compliance or noncompliance has been made. If the participant is found in compliance, all parties concerned will be notified. If a finding of noncompliance is made, specific violations will be set forth and a statement made that FmHA, with the concurrence of the Department's Office of Equal Opportunity, will initiate actions to impose sanctions.

VIII. Sanctions

Participants in FmHA's housing program failing to comply with the requirements of the AFHM regulations or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreement rules, or policies governing the program pursuant to which the application was made, including but not limited to denial of further participation in FmHA programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AFFIRMATIVE FAIR HOUSING MARKETING PLAN**COMPLETE FORM AND SUBMIT TO: FAIR HOUSING AND EQUAL OPPORTUNITY DIRECTOR/SPECIALIST,
AREA/SERVICE OFFICE****1. INTRODUCTION:**

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these Regulations carry out an affirmative program to attract prospective buyers or tenants of all minority and non-minority groups to the housing that the applicant is providing. These groups include Whites (*Non-Hispanic*) and members of minority groups: Blacks (*Non-Hispanic*), American Indians/Alaskan Natives, Hispanics and Asian/Pacific Islanders in the Standard Metropolitan Statistical Areas (SMSA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin.

2. APPLICATION AND PROJECT IDENTIFICATION:

A. APPLICANT'S:		B. PROJECT OR APPLICATION NUMBER	
NAME		NUMBER OF UNITS	
ADDRESS (Include City, State and ZIP Code)		PRICE OR RENTAL RANGE OF UNITS:	
TELEPHONE NUMBER		FROM \$ _____ TO \$ _____	
		D. FOR MULTIFAMILY HOUSING ONLY:	
		<input type="checkbox"/> ELDERLY <input type="checkbox"/> NON-ELDERLY	
C. PROJECT		E. APPROXIMATE STARTING DATES	
NAME		ADVERTISING _____ OCCUPANCY _____	
LOCATION/ADDRESS (Include City, State and ZIP Code)		F. NAME OF MANAGING/SALES AGENT	
COUNTY: _____, CENSUS TRACT: _____		ADDRESS (Include City, State and ZIP Code)	

3. TYPE OF AFFIRMATIVE MARKETING PLAN

- ☐ Project Plan; ☐ Annual Plan (for single family scattered site units). NOTE: A separate Annual Plan must be developed for each type of census tract in which the housing is to be built.
- ☐ Minority Area ☐ White (non-minority) Area ☐ Mixed Area (with _____ % minority residents)

4. DIRECTION OF MARKETING ACTIVITY

Indicate below which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts.

- ☐ White (Non-Hispanic) ☐ Black (Non-Hispanic) ☐ American Indian or Alaskan Native ☐ Hispanic ☐ Asian or Pacific Islander

5. MARKETING PROGRAM:**A. COMMERCIAL MEDIA**

Check the media to be used to advertise the availability of this housing.

- ☐ Newspaper(s)/Publication(s) ☐ Radio ☐ TV ☐ Billboard(s) ☐ Other (Specify) _____

NAME OF NEWSPAPER, RADIO OR TV STATION (1)	RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE (2)	SIZE/DURATION OF ADVERTISING (3)

B. BROCHURES, SIGNS AND HUD'S FAIR HOUSING POSTER:

- (1) Will brochures, leaflets, or handouts be used to advertise? ☐ Yes ☐ No. If yes, attach a copy or submit when available. (2) For project site sign; indicate sign size _____ x _____; Logotype size _____ x _____. Attach a photograph of project sign or submit when available. (3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the ☐ Sales/Rental Office(s); ☐ Real Estate Office(s); ☐ Model Unit(s); ☐ Other (Specify) _____

C. COMMUNITY CONTACTS

To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area or SMSA. If more space is needed attach an additional sheet. Notify HUD-FHEO of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

NAME OF GROUP/ ORGANIZATION (1)	RACIAL/ETHNIC IDENTIFICATION (2)	APPROXIMATE DATE OF CONTACT OR PROPOSED CONTACT (3)	PERSON CONTACTED OR TO BE CONTACTED (4)

ADDRESS AND TELEPHONE NUMBER (5)	METHOD OF CONTACT(S) (6)	INDICATE THE SPECIFIC FUNCTION GROUP/ ORGANIZATION WILL UNDERTAKE IN IMPLEMENTING THE MARKETING PROGRAM (7)

6. FUTURE MARKETING ACTIVITIES (Rental Units Only)

Check the block(s) that best describe future marketing activities to fill vacancies as they occur after the project has been initially occupied.

- ☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Brochures/Leflets/Handouts ☐ Site Signs
☐ Community Contacts ☐ Others (Specify) _____

7. EXPERIENCE AND STAFF INSTRUCTIONS

- A. Indicate any experience in marketing housing to the group(s) identified as least likely to apply ☐ Yes ☐ No
- B. Indicate training to be provided to staff on Federal, state and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

8. ADDITIONAL CONSIDERATIONS:

9. By signing this form, the applicant agrees, after appropriate consultation with HUD, to change any part of the plan covering a multifamily project to assure continued compliance with Section 200.620 of HUD's Affirmative Fair Housing Marketing Regulations.

FOR FHEO'S USE ONLY**SIGNATURE OF PERSON SUBMITTING PLAN**

APPROVAL BY

DISAPPROVAL BY

SIGNATURE

SIGNATURE

NAME (Type or print)

NAME (Type or print)

NAME (Type or print)

TITLE AND COMPANY

TITLE

TITLE

DATE

DATE

DATE

Instructions for Completing the Affirmative Fair Housing Marketing Form

Contractors with Conditional Commitments, Developers, Real Estate Brokers, Auctioneers, and Contractors managing housing inventory properties, are required to submit an Affirmative Marketing Plan under FmHA Instructions. The plan will be submitted to the FmHA Office requiring such submission. Further, any references to Form HUD-935.2, or in these instructions for completion, to "HUD" "Fair Housing and Equal Opportunity Director," "HUD-FHEO," will be directed to the FmHA Office requiring submission.

All questions should be answered before the form is submitted. If enough space has not been allowed for answering any item on the form, it is recommended that additional sheet(s) be attached. Each answer should be clearly identified on the additional sheets. The following instructions are provided for each item on the form:

- Item 1: Introduction. An explanation of the requirements of the Affirmative Fair Housing Marketing Program.
- Item 2: Applicant and Project Identification.
- A. Applicant's Name, Address, and Telephone Number. Self-explanatory.
- B. Project or Application Number. The case number as assigned by FmHA to the loan for which this plan is being filed. If no case number is available then leave space blank.
Number of Units. Self-explanatory.
Price or Rental Range of Units. The approximate price range of the housing for which this plan is being submitted.
- C. Project Name. Self-explanatory.
Location/Address. The street address, the nearest cross streets, or other suitable description of the location of the housing.
City. City includes, among others, township, municipality, borough.
State. Self-explanatory.
County. Self-explanatory.
Census Tract. Census tract or enumeration district. This information may be obtained from the Bureau of the Census, the local public library, local and areawide planning agencies, or the Department of HUD, Economic Market and Analysis Division.
- D. For Multifamily Housing Only. Self-explanatory.
- E. Approximate Starting Dates.
Advertising - the approximate date the applicant begins to advertise in any media including signs, newspapers, TV or radio, brochures, and community contacts. If the plan must be modified before marketing, approval must be granted by the State Director or the official authorized to approve the assistance requested.
Occupancy - the approximate date units will be leased or sold to occupants.
- Item 3: Type of Affirmative Marketing Plan.
Project Plan - a plan for a subdivision, multifamily project, or group of houses on one site.
Annual Plan - a plan developed by conditional commitment builders to cover construction and sales of five or more dwellings for a period of one year and real estate brokers and auctioneers offering five or more single family housing inventory properties in one subdivision or marketing area.
- Item 4: Direction or Marketing Activity.
The Affirmative Fair Housing Marketing Plan describes efforts to reach those persons who traditionally would not have been expected to apply for the housing. For instance, for housing in a predominately white area, special steps may be needed to make its availability known to minorities. Similarly, if the housing is located in an area of minority concentration, special steps may be needed to make its availability known to whites.
The Affirmative Marketing Plan shall be designed to attract applications for housing from all groups in the housing marketing area, including Blacks (Non-Hispanics), Whites (Non-Hispanic), American Indians or Alaskan Natives, Hispanic, and Asian or Pacific Islanders which are subjected to housing discrimination on the basis of race, color, religion, sex, or national origin.
Efforts must be made to avoid concentrating minority occupants in any one area or section of the housing project. The racial group categories are self-explanatory except possibly, American Indian or Alaskan Native, Hispanic and Asian or Pacific Islander.
"American Indian or Alaskan Native" includes American Indian, Aleut, and Eskimo.
"Hispanic" includes Hispanic, Mexican Latin American, Puerto Rican, Cuban, Central or South American, and Iberian.
"Asian or Pacific Islander" includes Japanese, Korean, Chinese, Samoan, Indian, Hawaiian, Polynesian, and Micronesian.
- Item 5: Marketing Program.
In order to develop an affirmative marketing program, there should be a review of normal marketing methods such as use of press, radio, TV, brochures, signs and community contacts. Determine how the methods used can be utilized to reach out to persons who otherwise might not apply for the housing. If it is anticipated that a greater number of applications will be received than number of units, resulting in an "instant rent-up," advertising and outreach to those persons who traditionally would not have been expected to apply for the housing shall be conducted for a period of time prior to the normal period for receipt of applications.
Advertising. In contemplating the use of an advertising firm, consideration should be given to using one that has experience in marketing successfully to a racially and ethnically varied population. All advertising shall include prominent use of the Equal Housing Opportunity Logotype, Slogan, or Statement. All advertising depicting persons shall depict persons of minority and non-minority groups. A plan must describe how advertising will be done.
- A. Commercial Media.
Indicate, by checking the appropriate box(es), the type of commercial media to be used. For each media indicated, give the name of newspaper, radio, or TV station; state the racial/ethnic identifications of major readers/audience; and state the approximate frequency and size and/or duration and frequency or intervals of advertisements to be placed.
The following two tables provided instructions for the use of the Equal Housing Opportunity Logotype, Statement and Slogan for display advertising. In all instances the type used should be bold display face and no smaller than eight points.

Table I

This table provides the minimum sizes for the use of the Equal Housing Opportunity (EHO) logotype. If other logotypes are used in the advertisement which are larger than the minimum size required for the EHO logotype, then the EHO logotype must be of a size equal to the largest of other logotypes.

<u>Approximate size of advertisement</u>	<u>Size of logotype in inches</u>
1/2 page or larger	2 x 2.
1/8 page up to 1/2 page	1 x 1.
4 column inches to 1/8 page	1/2 x 1/2.
Less than 4 column inches	Do not use.

Equal Housing Opportunity Logotype.Equal Housing Opportunity Statement.

We are pledged to the letter and spirit of U.S. policy for achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex or national origin.

Slogan: Equal Housing Opportunity.

Newspaper(s). If the applicant uses newspaper, magazine, or other media, the logo and slogan of required size must be used. The names and circulation of newspapers used and the size and frequency of ads must be included in this chart with a description for the use of the Equal Housing Opportunity logotype. Samples of ads must be attached to the Plan or submitted when available.

Radio and TV. If minority broadcasting is available within the normal market area, it is obvious that a greater "out-reach" effort would be accomplished by its use for a fair portion of the advertising.

B. Brochures, Signs and Fair Housing Poster.

Copies of brochures, leaflets, and all other printed materials relating to the housing must be attached to the affirmative marketing plan or submitted when available. (All printed material must display the EHO logo and/or slogan.)

Signs. Describe the sign advertising the house (on-site and elsewhere), by giving the size of the Equal Housing Opportunity logotype and site sign. The site sign must be set up when construction begins. A photograph should be provided when sign is erected.

The Fair Housing Poster must be displayed wherever sales or rental of the housing takes place - the model home; the rental office; or the real estate office. The intent to place Fair Housing Posters wherever sales or rental of the housing takes place should be indicated.

C. Community Contacts.

The name(s) of community groups expected to be contacted, the racial/ethnic identification of each, the approximate date of contact, the name, address and telephone number of the person to be contacted, the method of contact (mail or visit), and the approximate frequency of contact should be given. Copies of any letters to be sent must be enclosed. (All correspondence should display the EHO logo or slogan.) The specific function of the group/organization will undertake in implementing this plan should be indicated.

Community groups to be contacted comprise several kinds of groups which include persons to which special out-reach efforts may be directed.

- (1) Churches, social, civic, fraternal organizations, labor unions, Civil Rights and fair housing groups.
- (2) Major employers such as industrial plants or local, state or federal government agencies, civilian or military.
- (3) Small neighborhood businesses such as corner groceries, barbershops, and beauty parlors, and shoe repair shops which may be utilized for distribution of brochures or other material.

In smaller communities where there are no formal communications media in the minority community, special outreach efforts must depend upon community contacts. Community contacts are also useful in larger communities in reaching specific elements of the community, such as elderly, or particular ethnic groups. In larger communities, specialized community groups such as fair housing councils are important to supplement major communications media.

Item 6: Future Marketing Activities (Rental Units Only).

Check the method that will be used to market or advertise future vacancies for rental units.

~~Item 7: Anticipated Applicant/Occupancy Results. The anticipated applicant/occupancy results are a measure of effectiveness of the implementation of the Plan. They are not to be considered in any way as a forecast or informal quota. The applicant may choose to estimate anticipated rental applicant mix instead of anticipated occupancy results. If anticipated rental applicant mix is estimated, records must be maintained by the owner/management agent showing the race/ethnicity/gender of all persons filing applications for units in the development(s) covered by the Plan. If the applicant elects to use indicators of effectiveness which differ from those described in this part, such indicators shall be described at the bottom of the second page. Such indicators should be used to assess the effectiveness of specific aspects of the Affirmative Marketing program, to attend to the housing persons targeted for special outreach, e.g., media advertising, use of minority-owned media, community contacts, etc. The description should include a brief statement of the method to be used to measure effects (e.g., survey of applicant, tenant questionnaire or the like). The anticipated results should be realistic in terms of the proportion of population in the market area, based on the available Census information.~~

Item 7: Experience and Staff Instructions.

- a. Indicate whether the applicant has previous experience in marketing housing to group(s) identified as least likely to apply for the housing.
- b. Describe the instructions and training given to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan. Copies of any written materials should be submitted with the Plan, if such materials are available.

Item 8: Additional Considerations.

In this section describe other efforts not mentioned previously which are planned to attract persons in either those groups already identified in Part 4 of the Plan as least likely to apply for the housing or in groups not previously identified in the Plan. Such efforts may include outreach activities to female-headed households.

Item 9: The State Director or other FmHA official authorized to approve the requested assistance will approve or disapprove this AFHM Plan by signing in the appropriate column.

The applicant's authorized agent signs the AFHM Plan at the bottom and dates it. By signing the Plan the applicant assumes full responsibility for its implementation. FmHA will monitor the implementation of the Plan and request modification in its format or content when necessary.

Notice of Intent to Begin Marketing.

Ninety (90) days prior to starting sales in subdivisions or cooperative housing or starting rental marketing activities the applicant with an approved Affirmative Fair Housing Marketing Plan must submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15) and by FmHA regulations. It is submitted in writing to the FmHA District Director of the appropriate FmHA Office serving the locality in which the proposed housing is located. OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the Plan. The burden hours for such notification are included in the total designated for this Affirmative Fair Housing Marketing Plan Form.



EQUAL HOUSING OPPORTUNITY

(FAIR HOUSING LOGOTYPE)



**EQUAL HOUSING
OPPORTUNITY**

We Do Business in Accordance With the Federal Fair Housing Law

(Title VIII of the Civil Rights Act of 1968, as Amended by
the Housing and Community Development Act of 1974)

**IT IS ILLEGAL TO DISCRIMINATE AGAINST
ANY PERSON BECAUSE OF RACE, COLOR,
RELIGION, SEX, OR NATIONAL ORIGIN**

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services

Blockbusting is also illegal

An aggrieved person may file a complaint of a housing discrimination act with the:

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

- (3) The fund code.
- (4) The nature of the request.
- (5) The amount of decrease.
- (6) The new amount of loan (after decrease).

(e) Cancellation of loan. Loans may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 440-10, "Cancellation of Loan or Grant Check and/or Obligation" in an original and two copies (3 copies if the check is received in the District County Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forwarded to the Finance Office after making appropriate adjustments in the records to control loan allocations. A copy or copies of Form FmHA 440-10 will be returned to the District Office.

(2) If the loan check is received in the District Office, the District Director will return it to the Disbursing Center, U.S. Treasury Department, Post Office box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440-10.

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900-B).

(f) Handling loan check. The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office) and Subpart A of Part 1902 (FmHA Instruction 1902-A).

(g) Property insurance. Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(h) Prerent-up conference. To promote proper planning for initial rent up and occupancy, the District Director will convene with the applicant soon after loan approval to discuss the affirmative fair housing marketing plan or any other similar agreement approved for the project with the applicant and the applicant's management firm, if any.

(1) The District Director will review the applicant's marketing plan to determine that it is complete with all supplemental information provided. If it is determined that the plan should be modified before marketing activity begins, approval must be granted from the official authorized to approve the assistance requested prior to modification.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an effort to attract applications for housing from all groups in the housing marketing area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex, or national origin, outreach efforts shall be extended to those persons who would not be expected to apply for the housing. Such efforts shall be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy of any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective, and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. Should the District Director determine the applicant in noncompliance to the plan and a modification to the plan not warranted, the matter will be referred to the FmHA Administrator, attention Equal Opportunity Officer, through the State FmHA Compliance Officer.

§1944.236 Loan Closing.

(a) Applicable instructions. RRH loans will be closed in accordance with applicable provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) and any State Supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions, provided the attorney or title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization provided the cost is in accordance with §1944.212 (k) of this Subpart.



Public Law 90-284
90th Congress, H. R. 2516
April 11, 1968

An Act

To prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Civil Rights.

TITLE VIII—FAIR HOUSING

POLICY

Sec. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

DEFINITIONS

Sec. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 804, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply

FDIC or FSLIC
 institution.

Exemptions.

to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1968, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

Sec. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

DISCRIMINATION IN THE FINANCING OF HOUSING

Sec. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this sec-

tion shall impair the scope or effectiveness of the exception contained in section 803(b).

DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

Sec. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

EXEMPTION

Sec. 807. Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

ADMINISTRATION

Authority and
responsibility.
Assistant Secre-
tary.

Sec. 908. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. The Department of Housing and Urban Development Act (Public Law 89-174, 79 Stat. 667) is hereby amended by—

42 USC 3533.

(1) striking the word "four," in section 4(a) of said Act (79 Stat. 668; 5 U.S.C. 624b(a)) and substituting therefor "five,"; and

42 USC 3535.

(2) striking the word "six," in section 7 of said Act (79 Stat. 680; 5 U.S.C. 624(c)) and substituting therefor "seven."

Delegation of
authority.

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 3362, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

86 Stat. 413,
528.

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development

in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EDUCATION AND CONCILIATION

Sec. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

80 STAT. 499.

Reports on
conferences.

ENFORCEMENT

Sec. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irreversibly injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a sub-

Complaints.
Procedure for
filing.

Penalty.

sequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions.

(d) If, within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

INVESTIGATIONS; SUBPENAS; GIVING OF EVIDENCE

Sec. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

Records and documents, access.

Subpoenas.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

Witnesses, compensation.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Failure to testify, penalty...

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Civil action
without fees,
etc.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Damages, limitation.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided,* That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

EXPEDITION OF PROCEEDINGS

SEC. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

EFFECT ON STATE LAWS

SEC. 815. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Publication in
Federal Register.

INTERFERENCE, CORRECTION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENTOffice of the Assistant Secretary for
Fair Housing and Equal Opportunity

24 CFR Part 107

[Docket No. R-80-700]

Nondiscrimination and Equal
Opportunity in Housing Under
Executive Order 11063AGENCY: Department of Housing and
Urban Development

ACTION: Final rule.

SUMMARY: Executive Order 11063, Equal Opportunity in Housing was issued November 20, 1962 (27 FR 11527). Regulations implementing the Executive Order were issued under program authorities administered by various agencies that were incorporated in the Department of Housing and Urban Development when it was established in 1965. These are the first Department-wide regulations proposed under E.O. 11063.

Pursuant to the delegation of authority with respect to E.O. 11063 from the Secretary of Housing and Urban Development to the Assistant Secretary for Equal Opportunity and the Assistant Secretary for Fair Housing and Equal Opportunity, 37 FR 12253 (June 21, 1972), this final rule establishes compliance and enforcement procedures to be utilized by the Department in implementing its responsibilities under the Executive Order. The Department will revise obsolete regulations concerning Nondiscrimination and Equal Opportunity in Housing, 24 CFR 200.300.

DATES: Effective: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Ellen Stern, Special Assistant, Assistant Secretary for Fair Housing and Equal Opportunity, Room 5108, Department of Housing & Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Telephone No. (202) 755-6113. This is not a toll free number.

SUPPLEMENTARY INFORMATION: E.O. 11063 directs Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin (1) in the sale, leasing, rental or other disposition of residential property and related facilities which are owned or operated by the Federal Government or provided with Federal assistance; and (2) in the lending practices with respect to residential property and related

facilities of lending institutions insofar as such practices relate to loans insured or guaranteed by the Federal Government.

The purpose of these regulations is to establish a process to implement E.O. 11063; state the discriminatory practices prohibited by E.O. 11063; provide for affirmative action to overcome the effects of past discrimination and to prevent discrimination; and establish procedures and sanctions regarding the Department's enforcement of the Order.

The process established by the regulation to implement the Executive Order includes the following: (1) compliance meetings, to provide a forum for informal resolution of complaints; (2) compliance reviews; and (3) imposition of sanctions. The process is structured to exhaust informal avenues for resolution prior to imposition of sanctions. Specifically, upon receipt of a complaint or other indication of violation of the Executive Order, a compliance meeting is scheduled with the respondent to attempt to resolve the matter informally. If the respondent fails to appear or resolution fails, a compliance review is initiated by the Director of the Office of Regional Fair Housing and Equal Opportunity (FH&EO). Additionally, a compliance review may be scheduled, even in the absence of indication of a violation, for monitoring purposes or other legitimate purposes. Following completion of the review, a report is made to the Assistant Secretary for FH&EO for determination whether the respondent is in compliance or noncompliance with the Executive Order. In the event of a finding of noncompliance, the Assistant Secretary for FH&EO, pursuant to Notice to respondent of such a finding, may apply sanctions as provided in § 107.80.

Notice of a proposed amendment to Title 24 to issue these regulations as Part 107 was published in the Federal Register on September 26, 1979 (44 FR 55522) and comments were received from interested persons and organizations. Consideration was given to each comment. In general, comments of civil rights organizations reflected the following major concerns: the relationship of the Executive Order and this regulation to Title VI of the Civil Rights Act of 1964; role of the complainant; definition of discriminatory practices; and statute of limitations on the filing of complaints. Commenting regulatory agencies questioned coverage of regulated financial institutions by the rule as duplicatory. Other comments concerned, primarily the record keeping requirements and rights of respondents

in addressing complaints and responding to findings pursuant to compliance reviews. These major areas of comment are addressed below.

Applicability of the Rule to Title VI
Matters

The proposed rule stated that where discrimination on the grounds of race, color or national origin was cognizable under E.O. 11063 and involved a matter subject to Title VI of the Civil Rights Act of 1964, the provisions of that Title and its implementing regulations (24 CFR Part 1) would apply.

A number of commentators indicated that this language appeared to be a misconstruction of the statutory language of Title VI with regard to contracts of insurance or guaranty.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs of Federal financial assistance. Section 602 of the Title specifically exempts from coverage assistance by way of contract of insurance or guaranty. Further, Section 603 of Title VI provides that "Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of contract of insurance or guaranty."

In implementing Title VI of the Civil Rights Act of 1964, the Department by regulation has provided that the provisions of Title VI take precedence over all previous orders and regulations. However, the Title VI regulation states that the provisions of E.O. 11063 and any regulations issued thereunder insofar as they prohibit discrimination on the ground of race, color or national origin in any program or activity or situation to which Title VI does not apply are not superseded.

In view of the fact that Title VI supersedes only those provisions of E.O. 11063 regarding Federal financial assistance other than that provided by way of a contract of insurance or guaranty, the Department agrees that the reference to matters as cognizable under E.O. 11063 and Title VI is misleading. This Section has been revised to state that where allegations of discrimination on the grounds of race, color or national origin arise in a program or activity of Federal financial assistance which does not involve a contract of insurance or guaranty, the matter shall be processed in accordance with Title VI and its implementing regulations.

Thus, any complaint alleging discrimination on the basis of race, color, creed or national origin in a Department program or activity

involving a contract of insurance or guaranty will be received and processed pursuant to this Part. Where sanctions for the violation are imposed pursuant to the Department's Debarment, Suspension and Ineligibility Regulations (Part 24 of this Title) the participant, pursuant to the Department's authority to administer its programs and activities, can be excluded from participation in all Department programs for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

Role of Complainants and Respondents

Civil rights organizations commented in detail about the role of complainants in the enforcement procedures established by the rule. These commenters proposed inclusion of provisions for more active involvement of complainants as parties to matters in connection with the enforcement and compliance review processes. The compliance and enforcement system provided in E.O. 11063 establishes a process for Federal agencies to refuse to continue or to extend assistance in their programs and activities to persons who violate the requirements of the Executive Order. While the Department can address issues raised in connection with complaints and attempt in negotiations to achieve redress for complainants, its imposition of sanctions will not result in vindication of individual claims. The Department has determined, therefore, that it would be inappropriate to provide complainants with the status of parties in these procedures. However, in response to these comments, a variety of revisions have been incorporated to provide complainants with information regarding matters which are the subject of compliance investigation or review and to afford them a full opportunity to participate in the administrative processing of their complaints.

Specifically, provisions of the rule relating to complaints and to enforcement have been revised to provide for notice to complainants at all stages of proceedings under this regulation regarding determinations of compliance and to provide complainants an opportunity to attend compliance meetings. Complainants also will receive a copy of the compliance report and findings and will be given an opportunity to review the compliance review file and provide comments thereon. Additionally, the intent of this rule is that whenever a complainant alleges, pursuant to the Executive Order, a discriminatory practice which is also covered by Title VIII, it shall be the

responsibility of the Department to advise the complainant of the right to file a complaint pursuant to Title VIII and to inform him or her of the Department procedures available under that Title. These two major areas of revision reflect the conviction of the Department that a complainant who alleges the existence of a discriminatory housing practice should be given information about matters under review and access to all available remedies. Additionally, since initial attempts to review compliance will involve specific matters raised in a complaint, the Department has decided that the complainant should have an opportunity to assist the Department in attempts to resolve the specific matter informally previous to initiation of more comprehensive review, through a formal Department compliance review, of the respondent's total Department funded activities.

Accordingly, §§ 107.35, 107.40, 107.50, and 107.55 as revised will now assure notification of the complainant of every step planned and every determination made in the enforcement process, including initial findings relative to the complaint; notice of compliance meetings; outcome of compliance meetings; intent to conduct compliance review or to refer matters to the Assistant Secretary for FH&EO for possible imposition of sanctions; and notification of date of compliance reviews and outcome of such reviews. Additionally, § 107.40 has been amended to provide for participation of complainants in compliance meetings (through addition of a new Subsection(c)) and to allow complainants representation by counsel (Subsection (e)) at such meetings.

In response to other comments, provision has also been made for more adequate notification of respondents and greater opportunity for respondents to address findings of violations. Section 107.40 has been revised to provide for notification to the respondent of the allegations contained in a complaint and of the matters to be addressed in a compliance meeting. Section 107.55 has been amended to provide that a notice of noncompliance pursuant to a compliance review shall afford the respondent seven days to respond to the violations found and to resolve and remedy violations in the compliance report prior to referral of the matter to the Assistant Secretary for FH&EO.

Definition of "Discriminatory Practices"

Three major areas of concern were articulated by civil rights organizations in their comments on the definition of "discriminatory practices": (1)

Inadequate cognizance of the "effects test" in defining such practices; (2) Implied narrowness in the applicability of the definition; and (3) Need for more guidance to identify specific prohibited practices under the Executive Order, particularly in areas such as steering and redlining.

With respect to the effects tests issue, commenters suggested that failure to state explicitly in the rule its applicability to practices which have the effect of denying benefits to protected persons would result in interpretations that only intentional acts of discrimination are covered. It is not the interpretation of the Department that the Executive Order requires the existence of intent to discriminate as an essential element in establishing discriminatory practices; on the contrary, the Department believes that matters which appear neutral on their face in many cases may constitute violations of E.O. 11063 by virtue of their impact on protected groups. Nothing in the proposed rule was inconsistent with this conclusion. However, in order to more clearly state the Department's position in this area two revisions to the proposed rule have been adopted. Section 107.15(g)(1) has been revised to include explicitly in the definition of "discriminatory practices" activities which are discriminatory in effect. A new section 107.51, further, sets the standard for findings of noncompliance with the Executive Order, and includes among the basis for such findings the existence of a practice which is discriminatory in effect, unless a respondent can establish that such practice is designed to serve a legitimate business necessity or governmental purpose of the respondent unrelated to race, color, creed or national origin; that it carries out effectively the interest it is designed to serve; and that no alternative course of action would enable the respondent's interest to be served with less discriminatory impact. A practice with discriminatory effect is characterized as a policy or practice, or "any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance. . . ."

With regard to the scope of practices covered, a number of commenters stated that the discriminatory practices defined did not fully cover the range of prohibited housing practices. These commenters pointed out that the regulation did not address the relationship of E.O. 11063 enforcement

and comments under the provisions of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) are being submitted to the Department. The Department is currently reviewing these comments and will issue a final rule on the subject. The Department is also reviewing comments received from the public regarding the proposed rule. The Department is currently reviewing these comments and will issue a final rule on the subject. The Department is also reviewing comments received from the public regarding the proposed rule.

Now, regarding the proposed rule, the Department is currently reviewing these comments and will issue a final rule on the subject. The Department is also reviewing comments received from the public regarding the proposed rule. The Department is currently reviewing these comments and will issue a final rule on the subject. The Department is also reviewing comments received from the public regarding the proposed rule.

Comments received from groups representing the financial industry objected to the fact that the proposed rule would include references to "lender-assisted persons" pursuant to the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Section 504 prohibits discrimination against persons with disabilities on the basis of handicap in programs and activities of Federal financial assistance. Under the proposed rule, the Federal Department and agency is responsible for ensuring that the programs of Federal financial assistance are administered in a nondiscriminatory manner. Each Federal Department and agency also is required to develop regulations implementing the Section 504 requirements. The Department has published proposed regulations regarding nondiscrimination based on handicap in its programs. (45 CFR 101.106) (April 19, 1976). It is proposed that regulations on nondiscrimination based on handicap in its programs be published. (April 19, 1976). It is proposed that regulations on nondiscrimination based on handicap in its programs be published.

Implementation of Section 504 will cover discrimination based on handicap and in view of the fact that the Department has proposed the implementation of Section 504 will

comments and activities in a separate part of the rule. These comments have not been adopted in the final rule.

Comments of limitations for filing complaints.

Several commenters criticized the language in the proposed rule (§ 107.35) that complaints must be filed within 183 days of an alleged act of discrimination. These commenters suggested that the time limit for filing complaints be extended. The final rule adopts this suggestion and states that complaints may be filed within one year of the alleged discriminatory practice.

Recordkeeping

Section 107.30(a) requires collection of racial and national origin data in Department programs and activities. Comment by civil rights groups interpreted the recordkeeping requirement in the proposed rule as being circumscribed by the recordkeeping requirements of the Department program or activity under which assistance is granted. The language of § 107.30(a) has been clarified to mandate maintenance of race and national origin data as is required by the Department. This revised language assures that the regulation incorporates all applicable Department recordkeeping requirements for racial and national origin data.

There was comment by several groups that recordkeeping provisions applicable to lenders (§ 107.30(b)) are duplicative of requirements imposed by Federal financial regulatory agencies. It is not the intent of this regulation to mandate duplicative recordkeeping where records already kept by a lender pursuant to other regulations meet the requirements of this rule. Additionally, several commenters objected to the provision in this section that failure to comply with the recordkeeping requirements is *prima facie* evidence of discrimination.

Section 107.30(c) states the position of the Department that it has the authority to require the collection of data on the race and national origin of persons participating in programs and activities pursuant to its obligations regarding the administration and enforcement of its civil rights responsibilities. For example, in cases where the crucial issue is whether a disproportionate number of minorities have been denied housing or loans in violation of the Executive Order, the race and national origin records collected in connection with Department programs and activities will often be the only source of the statistical information needed to resolve the issue. Thus this Section was not intended to

define a new liability on any provided in the Executive Order but rather to provide an alternative and additional mechanism for establishing a respondent's liability for failure to document whether a claimant was successful.

However, commenters to the proposed rule also suggested that to comply with recordkeeping requirements pursuant to the Executive Order, a respondent shall be deemed *prima facie* evidence of a discriminatory practice is subject to misinterpretation and has, therefore, been deleted. Further, to clarify the relationship of the recordkeeping requirements to the other requirements of this regulation, the revised § 107.30(c) now indicates that where data required by § 107.30 is rendered unavailable by a respondent's own violation of recordkeeping requirements, it is the obligation of that respondent to establish its compliance with this Part and with the equal housing opportunity requirements of the Executive Order.

Of course, under § 107.30 failure or refusal to comply with the Executive Order or the requirements of this Part is a proper basis for applying sanctions which include sanctions specified by the rules or regulations of the Department governing the program under which assistance is provided.

Question was raised as to what liability, if any, would fall on a purchaser of "third party paper" in the event mortgages purchased or accompanying documents failed to contain the information required in § 107.29. In general, in the event of technical violations, no liability would be imposed on such a purchaser. The Department is responsible for assuring that the originating mortgage complies with this recordkeeping requirement.

Question was raised about the interpretation of the term "national origin" and the possible difficulty in identifying such origin in some cases where the information is not volunteered by the applicant. It should be noted with regard to recordkeeping described in § 107.30(b) that the term encompasses the same six broad categories established by the Equal Credit Opportunity Act.

Overlapping jurisdiction With Regulatory Agencies

Commenting regulatory agencies questioned the jurisdiction and need for this regulation with respect to coverage of financial institutions regulated by such agencies. These commenters pointed out that certain lenders are subject to regulations requiring compliance with the nondiscrimination in lending requirements of the Federal Fair Housing Act and the Equal Credit Opportunity Act.

The Department recognizes that many lenders to whom the proposed Nondiscrimination and Equal Opportunity in Housing Regulation would apply are already subject to regulatory requirements designed to assure that persons are not discriminated against on any prohibited basis covered by E.O. 11063. However, the Department has determined that the E.O. 11063 directive to Federal departments to take all actions necessary and appropriate to prevent discrimination in the lending practices of institutions with respect to assisted activities mandates the Department to continue to require compliance with the Executive Order by all institutions in their participation in the Department's activities. In this regard the regulation describes the processes the Department will utilize to review compliance by participants and to provide procedural due process in determining whether to impose sanctions provided in the Executive Order. The Department believes that compliance with the Executive Order and this regulation will not result in any significant burden on lenders desiring to participate in Department programs and activities. Additionally, the Department believes that this section is consistent with recordkeeping requirements imposed by Federal financial regulatory agencies, such as the Comptroller of the Currency and the Federal Home Loan Bank Board, pursuant to their regulatory authority and in furtherance of their responsibility to affirmatively further fair housing. Thus, the final regulation continues to require compliance by any financial institution with respect to their lending practices insofar as they relate to Department programs and activities.

However, in response to one comment, the sanctions provision of the regulation has been revised to provide notification to appropriate Federal financial regulatory agencies of findings of discrimination in order to permit those agencies to take prompt action consistent with their supervisory responsibilities.

In addition to the major areas of comment discussed above, numerous comments focused on specific provisions of the regulation:

§ 107.20(b) Prohibition Against Discrimination.

Comment by a regulatory agency proposed inclusion of guidelines, similar to guidelines proposed for enforcement of Regulation B, (pursuant to the Equal Credit Opportunity Act) to define affirmative action required to overcome the effects of prior discrimination. It is the intent of the Department to consider

guidelines for incorporation in Title VIII regulations or in a separate regulation. In the judgment of the Department, it is not appropriate to incorporate detailed standards or guidelines defining affirmative action in this procedural regulation.

Also in response to comment by a regulatory agency, the word "recipient" in § 107.15(g) and 107.20(b) has been replaced by "person", to clearly indicate the applicability of the paragraph to all persons covered by the Executive Order.

§ 107.25 Provision in Legal Instruments.

In response to several comments, § 107.25 has been amended to provide that all legal instruments in which statements of compliance with E.O. 11063 are required must include reference to the sanction provided in § 107.60 of this rule.

Additionally, in response to another critique, the language of this section has been revised and clarified extensively.

§ 107.40 Compliance meeting.

Several comments proposed an extension of the respondent's response time to notices of compliance meetings from seven to thirty days. It should be noted that the compliance meeting process and the procedures to implement it are parallel to those incorporated in 24 CFR Part 108, Compliance Procedures for Affirmative Fair Housing Marketing. These identical procedures and timetables will make it possible, in instances where there are complaints or indications of violations of both this regulation and 24 CFR Part 108 to address these matters in one proceeding, thus avoiding a cumbersome dual enforcement process. The purpose of the enforcement procedures in these regulations, including the initial compliance meeting, is to establish a process which provides opportunity for speedy and informal resolution of matters previous to initiation of steps toward the imposition of sanctions. The compliance meeting procedure is the pivotal vehicle for such speedy and informal resolution. This forum is designed primarily to acquaint the respondent fully with the nature of the alleged violation cited in the notice and to provide an informal setting for early discussion of the matters at issue. It is the determination of the Assistant Secretary for FH&EO that these purposes of the compliance meeting can best be accomplished by maintaining the notification provisions of the regulation.

Against this background, it is the judgment of the Department that extension of the response period would

be counterproductive to the speedy and informal resolution of matters which is the aim of compliance meetings. These comments have not been adopted.

§ 107.45 Resolution of Matters.

In response to comments by civil rights organizations, the provision in Section 302 of the Executive Order stipulating that informal resolution need not be pursued when similar efforts by other agencies have failed has been incorporated in § 107.45. Additionally, the role of the Assistant Secretary for FH&EO with respect to review of compliance with the terms of settlement agreements has been clarified and the Assistant Secretary's authority to take immediate action to impose sanctions in cases involving a failure to comply with such agreements has been made explicit.

§ 107.60 Sanctions and Penalties.

In response to comment by civil rights groups, the language referring to Departmental authority to impose sanctions provided in accordance with Department procedures relating to debarment, suspension, and ineligibility of contractors and grantees (24 CFR Part 24) in § 107.60(a) was revised to remove possible ambiguity about the applicability of this section.

Additionally, consistent with the provisions of the Executive Order, a new subsection (c) has been added to this section indicating that the Department shall use its good offices and take appropriate action, including the institution of litigation, "to promote the abandonment of discriminatory practices" with respect to residential property and related facilities provided with financial assistance previous to the effective date of the Executive Order.

One commentator suggested that an assurance be given that termination of approved lender status or of participation in GNMA mortgage purchase programs is the only appropriate sanction against lenders. This suggestion is not adopted. The Executive Order provides a full range of sanctions for violations of the Executive Order including referral to the Department of Justice for appropriate civil actions. Thus, the Department believes it would be inappropriate in this regulation to attempt to define all the remedies which are available in enforcement under the Executive Order.

A finding of no significant impact has been prepared in accordance with Department "Procedures for Protection and Enhancement of Environmental Quality." A copy of the Finding is available for inspection and copying in the Office of the Rules Docket Clerk.

Office of General Counsel, Room 5218, Department of HUD, 451 7th St., S.W., Washington, D.C. 20410. This regulation has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government.

This rule is listed as item number FH&EO-3-78 in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Part 107 is added to 24 CFR as follows:

**PART 107—NONDISCRIMINATION
AND EQUAL OPPORTUNITY IN
HOUSING UNDER EXECUTIVE ORDER**

* 11063

Sec.

- 107.10 Purpose.
- 107.11 Relation to other authorities.
- 107.15 Definitions.
- 107.20 Prohibition against discriminatory practices.
- 107.21 Prevention of discriminatory practices.
- 107.25 Provisions in legal instruments.
- 107.30 Recordkeeping requirements.
- 107.35 Complaints.
- 107.40 Compliance meeting.
- 107.45 Resolution of matters.
- 107.50 Compliance reviews.
- 107.51 Findings of Noncompliance.
- 107.55 Compliance report.
- 107.60 Sanctions and penalties.
- 107.65 Referral to the Attorney General.

Authority: E.O. 11063, Equal Opportunity in Housing, issued November 20, 1962 (27 FR 11527); delegation of authority by the Secretary of Housing and Urban Development published in 34 FR 12253 (June 21, 1972).

§ 107.10 Purpose.

These regulations are to carry out the requirements of E.O. 11063 that all action necessary and appropriate be taken to prevent discrimination because of race, color, creed, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the Federal Government, or provided with Federal assistance by the Department of Housing and Urban Development and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department. These regulations are intended to assure compliance with the established policy of the United States that the benefits under programs and activities of the Department which provide financial assistance, directly or indirectly, for the

provision, rehabilitation, or operation of housing and related facilities are made available without discrimination based on race, color, creed, or national origin. These regulations are also intended to assure compliance with the policy of this Department to administer its housing programs affirmatively, so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, creed, or national origin.

§ 107.11 Relation to other authorities.

(a) Where allegations of discrimination on the grounds of race, color, or national origin are made in a program or activity of Federal financial assistance of the Department which does not involve a contract of insurance or guaranty, the provisions of Title VI of the Civil Rights Act of 1964 and regulations implementing Title VI, Nondiscrimination in Federally Assisted Programs, under Part 1 of this Title shall apply. Any complaint alleging discrimination on the basis of race, color, creed or national origin in a program or activity of the Department involving a contract of insurance or guaranty will be received and processed according to this Part.

(b) Where a complaint filed pursuant to this Part alleges a discriminatory housing practice which is also covered by Title VIII of the Civil Rights Act of 1968, the complainant shall be advised of the right to file a complaint pursuant to Section 810 of that Title and of the availability of Department procedures regarding fair housing complaints under Part 105 of this Title. The complainant shall also be advised of the right to initiate a civil action in court pursuant to Section 812 of the Civil Rights Act of 1968 without first filing a complaint with HUD.

§ 107.15 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Secretary" means the Secretary of Housing and Urban Development.

(c) "State" means each of the fifty states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas, and the territories of the United States.

(d) "Assistance" includes (1) grants, loans, contributions, and advances of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the sale, lease, and rental of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such

property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, when such order granting permission accompanies the sale, lease, or rental of Federal properties; (4) loans in whole or in part insured, guaranteed, or otherwise secured by the credit of the Federal Government; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

(f) "Public entity" means a government or governmental subdivision or agency.

(g) "Discriminatory practice" means: (1) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin, in the sale, rental or other disposition of residential property or related facilities (including land to be developed for residential use), or in the use or occupancy thereof, where such property or related facilities are:

(i) Owned or operated by the Secretary;

(ii) Provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Department after November 20, 1962;

(iii) Provided in whole or in part by loans insured, guaranteed or otherwise secured by the credit of the Department after November 20, 1962; or

(iv) Provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency or unit of general purpose local government receiving Federal financial assistance from the Department under a loan or grant contract entered into after November 20, 1962.

(2) Any discrimination on the basis of race, color, creed, or national origin or the existence or use of a policy, practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially

impairs the ability of persons to apply for or receive the benefits of assistance because of race, color, creed or national origin in lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans, insured or guaranteed, by the Department after November 20, 1982. Examples of discriminatory practices under subsections (1) and (2) include but are not limited to the following when based on race, color, creed or national origin:

(i) Denial to a person of any housing accommodations, facilities, services, financial aid, financing or other benefit provided under a program or activity;

(ii) Providing any housing accommodations, facilities, services, financial aid, financing or other benefits to a person which are different, or are provided in a different manner, from those provided to others in a program or activity;

(iii) Subjecting a person to segregation or separate treatment in any matter related to the receipt of housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity;

(iv) Restricting a person in any way in access to housing, accommodations, facilities, services, financial aid, financing or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under a program or activity;

(v) Treating persons differently in determining whether they satisfy any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, financing or other benefits under a program or activity; and

(vi) Denying a person opportunity to participate in a program or activity through the provision of services or otherwise, or affording the person an opportunity to do so which is different from that afforded others in a program or activity.

(3) Noncompliance with relevant affirmative fair housing marketing requirements contained in Department programs and regulations.

(4) A formal finding of a violation of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law with respect to activities also covered by E.O. 11063.

§ 107.20 Prohibition against discriminatory practices.

(a) No person receiving assistance from or participating in any program or activity of the Department involving housing and related facilities shall engage in a discriminatory practice.

(b) Where such person has been found by the Department or any other Federal Department, agency, or court to have previously discriminated against persons on the ground of race, color, creed, or national origin, he or she must take affirmative action to overcome the effects of prior discrimination.

(c) Nothing in this Part precludes such person from taking affirmative action to prevent discrimination in housing or related facilities where the purpose of such action is to overcome prior discriminatory practice or usage or to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, creed or national origin.

§ 107.21 Prevention of discriminatory practices.

All persons receiving assistance from, or participating in any program or activity of the Department involving housing and related facilities shall take all action necessary and proper to prevent discrimination on the basis of race, color, creed, or national origin.

§ 107.23 Provisions in legal instruments.

(a) The following documents shall contain provisions or statements requiring compliance with E.O. 11063 and this Part:

(1) Contracts, grants and agreements providing Departmental assistance for the provision of housing and related facilities.

(2) Contracts, grants and agreements regarding the sale, rental or management of properties owned by the Secretary.

(3) Corporate charters and regulatory agreements relating to multifamily and land development projects assisted by the Department.

(4) Approvals of financial institutions and other lenders as approved FHA mortgagees.

(5) Requests for subdivision reports under home mortgage procedures and for preapplication analysis of multifamily and land development projects, and

(6) Contracts and agreements providing for Departmental insurance or guarantee of loans with respect to housing and related facilities.

(b) The provision or statement required pursuant to this section shall indicate that the failure or refusal to comply with the requirements of E.O.

11063 or this Part shall be a proper basis for the imposition of sanctions provided in § 107.60.

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related facilities subject to E.O. 11063 shall maintain racial and national origin data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race and national origin of each applicant and joint applicant for assistance with regard to residential property and related facilities. This data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic, Other (specify). If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

(c) If an investigation or compliance review under this Part reveals a failure to comply with any of the requirements of paragraph (a) or (b) of this section, the respondent shall have the burden of establishing its compliance with this Part and with the equal housing opportunity requirements of the Executive Order.

§ 107.35 Complaints.

(a) The Assistant Secretary for FH&EO, or designee, shall conduct such compliance reviews, investigations, inquiries, and informal meetings as may be necessary to effect compliance with this Part.

(b) Complaints under this Part may be filed by any person and must be filed within one year of date of the alleged act of discrimination unless the time for filing is extended by the Assistant Secretary for FH&EO. Complaints must be signed by the complainant and may be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C., 20416, or any Regional or Area Office of the Department. All complaints shall be forwarded to the Director, Office of Regional Fair Housing and Equal Opportunity in the appropriate Regional

Office which has jurisdiction in the area in which the property is located.

(c) Upon receipt of a timely complaint, the Director of the Office of Regional FH&EO shall determine whether the complaint indicates a possible violation of the Executive Order or this Part. The Director of the Office of Regional FH&EO or a designee within a reasonable period of time shall conduct an investigation into the facts. The complainant shall be notified of the determination.

§ 107.40 Compliance meeting.

(a) Where preliminary analysis of a complaint, a compliance review initiated by the Assistant Secretary for FH&EO, or other information indicates a possible violation of E.O. 11063, or this Part, the person allegedly in violation ("respondent") shall be sent a Notice of Compliance Meeting and requested to attend a compliance meeting. The Notice shall advise the respondent of the matters to be addressed in the Compliance Meeting and the allegations contained in a complaint received pursuant to Sec. 107.33. The purpose of the compliance meeting is to provide the respondent with the opportunity to address matters raised and to remedy such possible violations speedily and informally; to identify possible remedies; and to effect a resolution as provided in § 107.45.

(b) The Notice of Compliance Meeting shall be sent to the last known address of the person allegedly in violation, by certified mail, or through personal service. The Notice will advise such person of the right to respond within seven (7) days to the matters and to submit information and relevant data evidencing compliance with E.O. 11063, the Affirmative Fair Housing Marketing Regulations, 24 CFR 200.800, the Fair Housing Poster Regulations, 24 CFR Part 110, the Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, other affirmative marketing requirements applicable to the program or activity and any revisions thereto. Further, the person will be offered an opportunity to be present at the meeting in order to submit any other evidence showing such compliance. The date, place, and time of the scheduled meeting will be included in the Notice.

(c) Whenever a compliance meeting is scheduled as a result of a complaint, the complainant shall be sent a copy of the Notice of Compliance Meeting and shall be provided an opportunity to attend the meeting.

(d) The Area Office having jurisdiction over the program will prepare a report concerning the status of the respondent's participation in

Department programs to be presented to the respondent at the meeting. The Area Manager shall be notified of the meeting and may attend the meeting.

(e) At the Compliance Meeting the respondent and the complainant may be represented by counsel and shall have a fair opportunity to present any matters relevant to the complaint.

(f) During and pursuant to the Compliance Meeting, the Director of the Office of Regional FH&EO shall consider all evidence relating to the alleged violation, including any action taken by the person allegedly in violation to comply with E.O. 11063.

(g) If the evidence shows no violation of the Executive Order or this Part, the Director of the Office of Regional FH&EO shall so notify the person(s) involved within ten (10) days of the meeting. A copy of this notification shall be sent to the complainant, if any, and shall be submitted to the Assistant Secretary for FH&EO.

(h) If the evidence indicates an apparent failure to comply with the Executive Order or this Part, and the matter cannot be resolved informally pursuant to § 107.45, the Director of the Office of Regional FH&EO shall so notify the respondent and the complainant, if any, no later than ten (10) days after the date on which the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the complainant, if any, and the respondent whether the Department will conduct a compliance review pursuant to § 107.50 or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO. The compliance review shall be conducted to determine whether the respondent has complied with the provisions of E.O. 11063, Title VIII of the Civil Rights Act of 1968, Department regulations and the Department's Affirmative Fair Housing Marketing requirements.

(i) If the respondent fails to attend a compliance meeting scheduled pursuant to this section, the Director of the Office of Regional FH&EO shall notify the respondent no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, as to whether the Department will conduct a compliance review or, where appropriate, refer the matter to the Assistant Secretary for FH&EO for possible imposition of sanctions. A copy of this notification shall be submitted to the Assistant Secretary for FH&EO and sent to the complainant, if any.

§ 107.45 Resolution of matters.

(a) Attempts to resolve and remedy matters found in a complaint investigation or a compliance review shall be made through the methods of conference, conciliation, and persuasion.

(b) Resolution of matters pursuant to this section and § 107.40 need not be attempted where similar efforts by another Federal agency have been unsuccessful in ending and remedying the violation found with respect to the same respondent.

(c) Efforts to remedy matters shall be directed toward achieving a just resolution of the probable violation and obtaining assurance(s) that the respondent will satisfactorily remedy any violation of E.O. 11063 and will take actions to eliminate the discriminatory practices and prevent reoccurrences. Compensation to individuals from the respondent may also be considered.

(d) The terms of settlements shall be reduced to a written agreement, signed by the respondent and the Assistant Secretary for FH&EO or a designee. Such settlements shall seek to protect the interests of the complainant, if any, other persons similarly affected, and the public interest. A written notice of the disposition of matters pursuant to this section and of the terms of settlements shall be given to the Area Manager by the Assistant Secretary for FH&EO or a designee and to the complainant, if any. When the Assistant Secretary or a designee determines that there has been a violation of a settlement agreement, the Assistant Secretary immediately may take action to impose sanctions provided under this Part, including the referral of the matter to the Attorney General for appropriate action.

§ 107.50 Compliance reviews.

(a) Compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or a designee. Complaints alleging a violation(s) of this Part or information ascertained in the absence of a complaint indicating apparent failure to comply with this Part shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall be notified of all alleged violations of the regulations. A complaint is not a prerequisite for the initiation of compliance review.

(b) The purpose of a compliance review is to determine whether the respondent is in compliance with the Executive Order and this Part. Where allegations may also indicate a violation of the provisions of Title VIII of the Civil

*Advertising Guidelines for Fair Housing, 37 FR 6700, April 1, 1972, were reissued in regulation form with certain revisions as of August 26, 1980 (See 45 FR 57102).

Rights Act of 1968. HUD regulations issued thereunder and Affirmative Fair Housing Marketing requirements, a review may be undertaken to determine compliance with those requirements. The respondent shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The complainant shall also be notified of the compliance review.

§ 107.51 Findings of Noncompliance.

(a) A finding of noncompliance shall be made when the facts disclosed during an investigation or compliance review, or other information, indicate a failure to comply with the provisions of E.O. 11063 or this Part. In no event will a finding of noncompliance precede the completion of the compliance meeting procedures set forth in § 107.40.

(b) Determinations of noncompliance with E.O. 11063 shall be made in any case in which the facts establish the existence of a discriminatory practice under § 107.15(g).

(c) The existence or use of a policy or practice, or any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons, because of race, color, creed or national origin, to apply for or receive the benefits of assistance shall be a basis for finding a discriminatory practice unless the respondent can establish that:

(1) The policy or practice is designed to serve a legitimate business necessity or governmental purpose of the respondent;

(2) The policy or practice effectively carries out the interest it is designed to serve; and

(3) No alternative course of action could be adopted that would enable respondent's interest to be served with a less discriminatory impact.

§ 107.55 Compliance report.

(a) Following completion of efforts under this Part, the Director of the Office of Regional FH&EO or a designee shall prepare a compliance report promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the respondent is in compliance, all persons concerned shall be notified of the finding. Where a finding of noncompliance is made, the report shall specify the violations found. The Director of the Office of Regional FH&EO shall send a copy of the report to the respondent by certified mail, return receipt requested, together with a Notice that the matter will be forwarded to the Assistant Secretary for FH&EO

for a determination as to whether actions will be initiated for the imposition of sanctions. The Regional Director of the Office having jurisdiction over the programs involved and the Area Manager shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO.

(b) The Notice will provide that the respondent shall have seven (7) days to respond to the violations found and resolve and remedy matters in the compliance report. At the expiration of the seven (7) day period the matter shall be referred to the Assistant Secretary for FH&EO.

(c) The complainant shall be sent a copy of the findings and compliance report and shall have seven (7) days to comment thereon.

§ 107.60 Sanctions and penalties.

(a) Failure or refusal to comply with E.O. 11063 or the requirements of this Part shall be proper basis for applying sanctions. Violations of Title VIII of the Civil Rights Act of 1968 or a state or local fair housing law, with respect to activities covered by the Executive Order, or of the regulations and requirements under E.O. 11063 of other Federal Departments and agencies may also result in the imposition of sanctions by this Department.

(b) Such sanctions as are specified by E.O. 11063, the contract through which Federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which Federal assistance to the project is provided, shall be applied in accordance with the relevant regulations. Actions which may be taken include: cancellation or termination, in whole or in part of the contract or agreement; refusal to approve a lender or withdrawal of approval; a determination of ineligibility, suspension or debarment from any further assistance or contracts provided, however, that sanctions of debarment, suspension and ineligibility are subject to the Department's regulations under Part 24 of this Title; and provided further, that no sanction under Section 302 (a), (b) and (c) of E.O. 11063 shall be applied by the Assistant Secretary for FH&EO without the concurrence of the Secretary.

(c) The Department shall use its good offices in order to promote the abandonment of discriminatory practices with regard to residential property and related facilities provided with assistance prior to the effective date of E.O. 11063 and take appropriate actions permitted by law including the institution of appropriate litigation to

provide such equal housing opportunities.

(d) In any case involving the failure of a lender to comply with the requirements of the Executive Order or this Part, the Assistant Secretary for FH&EO shall notify the Federal financial regulatory agency having jurisdiction over the lender of the findings in the case.

§ 107.65 Referral to the Attorney General.

If the results of a complaint investigation or a compliance review demonstrate that any person, or specified class of persons, has violated E.O. 11063 or this Part, and efforts to resolve the matter(s) by informal means have failed, the Assistant Secretary for FH&EO in appropriate cases shall recommend that the General Counsel refer the case to the Attorney General of the United States for appropriate civil or criminal action under Section 303 of E.O. 11063.

Issued at Washington, D.C., September 4, 1980.

Sterling Tucker,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 80-27642 Filed 9-9-80; 8:45 am]

BILLING CODE 4210-01-M

Thursday
August 9, 1979

Part IV

Department of
Housing and Urban
Development

Office of Assistant Secretary for Fair
Housing and Equal Opportunity

Compliance Procedures for Affirmative
Fair Housing Marketing

DEPARTMENT OF HOUSING AND DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

CFR Part 108

(Docket No. R-79-701)

Compliance Procedures for Affirmative Fair Housing Marketing

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This Final Rule establishes a comprehensive review procedure for determining applicant compliance with Affirmative Fair Housing Marketing Plans submitted to HUD, and assuring compliance with the Department's Affirmative Fair Housing Marketing requirements. It makes final, with certain changes, a proposed rule published at 42 FR 3097 on January 27, 1977.

EFFECTIVE: September 10, 1979.

FOR FURTHER INFORMATION CONTACT: Marianne Friedman, Special Assistant, Assistant Secretary for Fair Housing and Equal Opportunity, room 3240, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone: 202-755-7007.

SUPPLEMENTARY INFORMATION: The purpose of these regulations is to establish a process to implement the Department's Affirmative Fair Housing Marketing (AFHM) Regulations (24 CFR 200.800 et seq.) by establishing a comprehensive compliance procedure which would provide all applicants subject to AFHM requirements advance information as to Departmental procedure to assure compliance with AFHM Regulations. Notice of a proposed amendment to Title 24 to include a new Part 108 was published in the Federal Register on January 7, 1977 (42 FR 3097) and comments were received from interested persons and organizations. Consideration has been given to each comment.

In response to a comment received, appropriate revisions in this regulation were made to reflect clearly the amendment of Title VIII to prohibit discrimination based on sex (Housing and Community Development Act of 1974, Public Law 99-383) and the AFHM Regulations as amended on May 8, 1973 (40 FR 20080).

A group of fair housing organizations jointly filed their comments jointly

suggested that the process of evaluating applicants' AFHM plans (Section 108.4 of the proposed regulations) should be initiated earlier, and requested that the regulations be rewritten to require that applicants file a "Notification of Intent to Begin Marketing" and submit evidence at that time of compliance with the plans as approved. These organizations also requested that the show cause procedure to determine compliance be eliminated, and that a full compliance review be conducted when evidence submitted at this time, or in any reports required, would appear to indicate noncompliance.

Although the comments of this group of fair housing organizations were not totally adopted as submitted, most of the comments have been incorporated in the regulation. Notification of the intent to begin marketing units, which is currently required in most Section 8 Housing Assistance Payments Programs, will now, under this regulation, be required from all applicants submitting an AFHM Plan.

The regulation further establishes a regular procedure for reviewing compliance with previously approved Affirmative Fair Housing Marketing plans and for updating such plans when necessary. Additionally, pre-occupancy conferences, which have been used in some HUD housing programs, can now be held to review an applicant's AFHM plan prior to the initiation of marketing activities.

The entire proposed compliance procedures have been compressed into: (1) A pre-occupancy conference; (2) a compliance meeting; (3) a compliance review; and (4) initiation of sanctions.

The show cause procedure involving the formal presentation of evidence prior to the initiation of a compliance review has been eliminated as being cumbersome, time consuming, and duplicative. Less formal procedures have been developed. These procedures are intended to establish a cumulative process which provides a setting for timely informal resolution of matters prior to the imposition of sanctions. The mechanisms for such informal resolution are the pre-occupancy conference and the compliance meeting. A pre-occupancy conference will be called, as necessary, by the Area Office for resolution of matters prior to initiation of marketing. A compliance meeting is a more formal proceeding to be scheduled by the Director of the Office of Regional FH&EO whenever a complaint, a sales or rental report, a pre-occupancy conference or other information indicates possible noncompliance with the AFHM regulation or this Part or the

need to modify the AFHM plan or the implementation of the Plan.

The stages of the AFHM procedures provided in this Part are summarized below:

(1) Pre-occupancy Conference. The regulation requires each applicant to submit a Notification of Intent to Begin Marketing to the appropriate Area Office 90 days prior to initiation of marketing. Upon receipt of such notice, the Fair Housing and Equal Opportunity (FH&EO) Division of the Area Office will review the applicant's plan and, if necessary, schedule a pre-occupancy conference. Such a conference will be held prior to initiation of any marketing activities by the applicant.

At the conference the previously approved AFHM plan is reviewed to determine if the plan and/or proposed implementation require modification. The purpose of such modification is to assure, prior to implementation of marketing, that the goals of the AFHM regulations and the plan will be achieved.

(2) Compliance Meeting. A compliance meeting is scheduled when a complaint, a sales or occupancy report or other information indicates that the goals of the AFHM plan may not be achieved or that the implementation of the plan should be modified. Compliance meetings also may be scheduled where an applicant has failed to comply with a procedural requirement of this part, such as submission of required reports. The procedures for the meeting have been set forth in a new Section 108.25.

An applicant is requested to bring to the meeting documentation to show how the AFHM plan is being implemented, and other appropriate evidence. If it is determined as a result of the meeting that corrections are needed in the AFHM plan and the applicant refuses to make such necessary corrections, the Department may conduct a comprehensive compliance review or, where appropriate, refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of actions, including the imposition of sanctions.

(3) Compliance Review. Procedures for the compliance review are set forth in a new Section 108.40. The purpose of a compliance review is to determine whether or not the applicant is in compliance with the Department's AFHM requirements, the applicant's approved AFHM plan and, when applicable, the provisions of Executive Order 11063 and Title VIII. Compliance reviews may be scheduled routinely or in response to specific complaints or

other information indicating non-compliance.

Applicants are to be given at least five days notice of the time and place set for the compliance review. A review will be made of:

(1) Applicant's sales and rental practices;

(2) Programs to attract minority and majority buyers and renters, of both sexes.

(3) Data on the size and location of units, services provided, prices and rental ranges, and the race and sex of buyers, tenants, and rental and sales staff.

(4) Other matters relating to marketing, sales and rentals of dwellings under HUD affirmative marketing requirements, the AFHM Plan, or this part.

Following a compliance review, a report will be prepared indicating whether a finding of compliance or noncompliance has been made. If it is found that the applicant is in compliance, all parties concerned shall be notified. Where a finding of noncompliance is made, the specific violation(s) will be set forth and a statement made that the Department may consider initiating actions to impose sanctions.

(4) Initiation of Sanctions

Whenever a finding of noncompliance is made, the specific violation(s) will be set forth and a statement made that, unless matters raised are resolved, the Assistant Secretary for Fair Housing and Equal Opportunity will make a determination as to whether to initiate actions to impose sanctions. Notice of the referral to the Assistant Secretary will be given to the applicant. The appropriate program officials will also be informed of any compliance actions initiated pursuant to this regulation.

In response to one comment received, a new Section 103.35 has been incorporated to show clearly that individuals and private or public agencies may file complaints alleging violations of an approved AFHM plan.

A recommendation that a complainant be a party to all proceedings was rejected since the complainant who files a complaint of a violation of an AFHM plan is not an aggrieved individual entitled to individual relief under HUD's AFHM regulations. However, where a complaint includes allegations of violations of Title VIII of the Civil Rights Act of 1968, the complainant is an aggrieved person within the terms of Section 810(a) of Title VIII and is a party to all proceedings for enforcement of complaints against discriminatory housing practices.

Other comments were of a general nature and could not be addressed in the regulation. However, various editorial and technical corrections have been made pursuant to the recommendations of commentators and staff.

The Department has determined that this Regulation will not have an environmental impact, as defined in the "Procedures for Protection and Enhancement of Environmental Quality. A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

Accordingly, Subchapter A of Chapter I of Title 24 of the Code of Federal Regulations is amended by including a new Part 103 to read as follows:

PART 103—COMPLIANCE PROCEDURES FOR AFFIRMATIVE FAIR HOUSING MARKETING

Sec.

103.1 Purpose and Application.

103.5 Authority.

103.15 Pre-occupancy conference.

103.20 Area Office Responsibility for Monitoring Plans and Reports.

103.21 Regional Office Compliance Responsibility.

103.25 Compliance Meeting.

103.30 Complaints.

103.40 Compliance Reviews.

103.45 Compliance Report.

103.50 Sanctions.

Authority.—Section 7(d) of the Department of Housing and Urban Development Act of 1968, 42 U.S.C. Section 1335(d).

§103.1 Purpose and Application.

(a) The primary purpose of this regulation is to establish procedures for determining whether or not an applicant's actions are in compliance with its approved Affirmative Fair Housing Marketing (AFHM) plan, AFHM Regulation (24 CFR 200.600), and AFHM requirements in Departmental programs.

(b) These regulations apply to all applicants for participation in subsidized and unsubsidized housing programs administered by the Department of Housing and Urban Development and to all other persons subject to Affirmative Fair Housing Marketing requirements in Department programs.

(c) The term "Applicant" includes:

(1) All persons whose applications are approved for development or rehabilitation of: subdivisions; multifamily projects; mobile home parks of five or more lots, units or spaces; or dwelling units, when the applicant's participation in FHA housing programs has exceeded, or would thereby exceed,

development of five or more such dwelling units during the year preceding the application, except that there shall not be included in a determination of the number of dwelling units developed or rehabilitated by an applicant, those in which a single family dwelling is constructed or rehabilitated for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation. For the purposes of this definition, a person remains an "applicant" from the date of submission of an application through duration of receipt of assistance pursuant to such application.

(2) All other persons subject to AFHM requirements in Departmental programs.

(d) The term "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives or agents, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and public entities.

§ 103.5 Authority.

The regulations in this part are issued pursuant to the authority to issue regulations granted to the Secretary by Section 7(d) of the Department of Housing and Urban Development Act of 1968, 42 U.S.C. 1335(d). They implement the functions, powers, and duties imposed on the Secretary by Executive Order 11063, 27 FR 11527 and Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3602.

§ 103.15 Pre-occupancy conference.

Applicants shall submit a Notification of Intent to Begin Marketing to the HUD Area Office having jurisdiction over the area in which the housing is located no later than 90 days prior to engaging in sales or rental marketing activities. Upon receipt of the Notification of Intent to Begin Marketing from the applicant, the FH&EO Division of the Area Office Division shall review any previously approved plan and may schedule a pre-occupancy conference. Such pre-occupancy conference shall be held prior to initiation of sales or rental marketing activities.

At this conference, the previously approved AFHM plan shall be reviewed with the applicant to determine if the plan, and/or its proposed implementation, requires modification previous to initiation of marketing in order to achieve the objectives of the AFHM regulation and the plan.

§ 108.20 Area office Responsibility for monitoring plans and reports.

(a) *Submission of Documentation.* Pursuant to initiation of marketing, the applicant shall submit to the Area Office reports documenting of the implementation of the AFHM plan, including sales or rental reports, as required by the Department. Copies of such documentation shall be forwarded to the Director of the Office of Regional Fair Housing and Equal Opportunity by the FH&EO Division of the Area Office as requested.

(b) *Monitoring of AFHM Plan.* The FH&EO Division of the Area Office is responsible for monitoring AFHM plans and providing technical assistance to the applicant in preparation or modification of such plans during the period of development and initial implementation.

(c) *Review of Applicant's Reports.* Each sales or rental report shall be reviewed by the FH&EO Division of the Area Office as it is received. When sales or rental reports show that 20% of the units covered by the AFHM plan have been sold or rented, or whenever it appears that the plan may not accomplish its intended objective, the Area Office FH&EO Division shall notify the Director of the Office of Regional FH&EO.

(d) *Failure of Applicant to File Documentation.* If the applicant fails to file required documentation, the applicant shall be sent a written notice indicating that if the delinquent documentation is not submitted to the Area Office within 10 days from date of receipt of the notice, the matter will be referred to the Director of the Regional FH&EO for action which may lead to the imposition of sanctions.

§ 108.21 Regional Office Compliance Responsibility.

The Director of the Office of Regional FH&EO shall be responsible for determining whether an applicant's actions are in apparent compliance with its approved AFHM plan, the AFHM regulations, and this Part and for determining changes or modifications necessary in the Plan after initiation of marketing.

§ 108.25 Compliance Meeting.

(a) *Scheduling Meeting.* If an applicant fails to comply with requirements under Sections 108.15 or 108.20 or it appears that the goals of the AFHM plan may not be achieved, or that the implementation of the Plan should be modified, the Director of the Office of Regional FH&EO shall schedule a meeting with the applicant.

The meeting shall be held at least ten days before the next sales or rental report is due. The purpose of the compliance meeting is to review the applicant's compliance with AFHM requirements and the implementation of the AFHM Plan and to indicate any changes or modifications which may be required in its Plan.

(b) *Notice of Compliance Meeting.* A Notice of Compliance Meeting shall be sent to the last known address of the applicant, by certified mail or through personal service. The Notice will advise the applicant of the right to respond within seven (7) days to the matters identified as subjects of the meeting and to submit information and relevant data evidencing compliance with the AFHM regulations, the AFHM Plan, Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, when appropriate.

(c) *Applicant Data Required.* The applicant will be requested in writing to provide, prior to or at the compliance meeting, specific documents, records, and other information relevant to compliance, including but not limited to:

(1) Copies or scripts of all advertising in the Standard Metropolitan Statistical Area (SMSA) or housing market area, as appropriate, including newspaper, radio and television advertising, and a photograph of any sale or rental sign at the site of construction;

(2) Copies of brochures and other printed material used in connection with sales or rentals;

(3) Evidence of outreach to community organizations;

(4) Any other evidence of affirmative outreach to groups which are not likely to apply for the subject housing;

(5) Evidence of instructions to employees with respect to company policy of nondiscrimination in housing;

(6) Description of training conducted with sales/rental staff;

(7) Evidence of nondiscriminatory hiring and recruiting policies for staff engaged in the sale or rental of properties, and data by race and sex of the composition of the staff;

(8) Copies of applications and waiting lists of prospective buyers or renters maintained by applicant;

(9) Copies of Sign-in Lists maintained on site for prospective buyers and renters who are shown the facility;

(10) Copies of the selection and screening criteria;

(11) Copies of relevant lease or sales agreements;

(12) Any other information which documents efforts to comply with an approved plan.

(d) *Preparation for the Compliance Meeting.* The Area Office Housing

Division will provide information concerning the status of the project or housing involved to be presented to the applicant at the meeting. The Area Manager shall be notified of the meeting and may attend.

(e) *Resolution of Matters.* Where matters raised in the compliance meetings are resolved through revision to the plan or its implementation, the terms of the resolution shall be reduced to writing and submitted to the Regional Office within 10 days of the date of the compliance meeting.

(f) *Determination of Compliance.* If the evidence shows no violation of the AFHM regulations and that the applicant is complying with its approved AFHM plan and this Part, the Director of the Office of Regional FH&EO shall so notify the applicant within 10 days of the meeting.

(g) *Determination of Possible Noncompliance.* If the evidence indicates an apparent failure to comply with the AFHM plan or the AFHM regulation, or if the matters raised cannot be resolved, the Director of the Office of Regional FH&EO shall so notify the applicant no later than ten (10) days after the date of the compliance meeting is held, in writing by certified mail, return receipt requested, and shall advise the applicant that the Department will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions. The purpose of a compliance review is to determine whether the applicant has complied with the provisions of Executive Order 11063, Title VIII of the Civil Rights Act of 1968, and the AFHM regulations in conjunction with the applicant's specific AFHM plan previously approved by HUD.

(h) *Failure of Applicant to Attend the Meeting.* If the applicant fails to attend the meeting scheduled pursuant to this section, the Director of the Office of Regional FH&EO shall so notify the applicant no later than ten (10) days after the date of the scheduled meeting, in writing by certified mail, return receipt requested, and shall advise the applicant as to whether the Director will conduct a comprehensive compliance review or refer the matter to the Assistant Secretary for Fair Housing and Equal Opportunity for consideration of action including the imposition of sanctions.

§ 108.35 Complaints.

Individuals and private and public entities may file complaints alleging violations of the AFHM regulations or an approved AFHM plan with any HUD Area Office, HUD Regional Office, or with the Assistant Secretary for FH&EO. Complaints will be referred to the Director of the Office of Regional FH&EO. Where there is an allegation of a violation of Title VIII the complaint also will be processed under Part 105.

§ 108.40 Compliance reviews.

(a) *General.* All compliance reviews shall be conducted by the Director of the Office of Regional FH&EO or designee. Complaints alleging a violation(s) of the AFHM regulations, or information ascertained in the absence of a complaint indicating an applicant's failure to comply with an AFHM plan, shall be referred immediately to the Director of the Office of Regional FH&EO. The Regional Director for Housing and the Area Manager shall be notified as appropriate of all alleged violations of the AFHM regulations or alleged failure to comply with an AFHM plan.

(b) *Initiation of Compliance Reviews.* Even in the absence of a complaint or other information indicating noncompliance pursuant to subsection (a), the Director of the Office of Regional FH&EO may conduct periodic compliance reviews throughout the life of the mortgage in the case of multi-family projects and throughout the duration of the Housing Assistance Payments Contract with the Department in the case of housing assisted under Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437.

(c) *Nature of Compliance Reviews.* The purpose of a compliance review is to determine whether the applicant is in compliance with the Department's AFHM requirements and the applicant's approved AFHM plan. Where allegations under this part may also constitute a violation of the provisions of Executive Order 11063 or Title VIII, the review will also determine compliance with the requirements thereof. The applicant shall be given at least five (5) days notice of the time set for any compliance review and the place or places for such review. The compliance review will cover the following areas:

(1) Applicant's sales and rental practices, including practices in soliciting buyers and tenants, determining eligibility, selecting and rejecting buyers and renters, and in

concluding sales and rental transactions.

(2) Programs to attract minority and majority buyers and renters regardless of sex, including:

(A) use of advertising media, brochures, and pamphlets;

(B) conformance with both the Department's Fair Housing Poster Regulation (24 CFR 110) and the Advertising Guidelines for Fair Housing (37 FR 6700) and any revisions thereto.

(3) Data relating to:

(A) the size and location of units;

(B) services provided;

(C) sales and/or rental price ranges;

(D) the race and sex of buyers and/or renters;

(E) race and sex of staff engaged in sale or rental of dwellings.

(4) Other matters relating to the marketing or sales of dwellings under HUD affirmative marketing requirements, the AFHM Plan and this Part.

§ 108.45 Compliance report.

Following a compliance review, a report shall be prepared promptly and the Assistant Secretary for FH&EO shall make a finding of compliance or noncompliance. If it is found that the applicant is in compliance, all parties concerned shall be notified of the findings. Whenever a finding of noncompliance is made pursuant to this Part, the report shall list specifically the violations found. The applicant shall be sent a copy of the report by certified mail, return receipt requested, together with a notice that, if the matter cannot be resolved within ten days of receipt of the Notice, the matter will be referred to the Assistant Secretary for FH&EO to make a determination as to whether actions will be initiated for the imposition of sanctions. The Director of the Office of Regional Housing and the Area Director of the Housing Division shall also receive a copy of the report and the notice of intention to refer the matter to the Assistant Secretary for FH&EO for a determination as to whether actions will be initiated to impose sanctions.

§ 108.50 Sanctions.

Applicants failing to comply with the requirements of these regulations, the AFHM regulations, or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation, in Departmental programs and referral to the Department of Justice for suit by

the United States for injunctive or other appropriate relief.

Issued at Washington, D.C., July 30, 1979.

Patricia Roberts Harris.

Secretary, Department of Housing and Urban Development.

FR Doc. 79-24350 Filed 8-6-79; 8:45 am

BALTIMO CODE 4210-61-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

301 Constitution Avenue, N.E.
Washington, D.C. 20410

44 CFR Part 100

(Housing) (No. 100-100)

Fair Housing Advertising Guidelines

AGENCY: Department of Housing and
Urban Development.
ACTION: Final rule.

SUMMARY: This regulation contains a revised and amended version of the Advertising Guidelines for Fair Housing, with certain changes. This regulation also takes into account the amendment of Title VII of the Civil Rights Act of 1964, (42 U.S.C. 2000e-2) prohibiting discrimination on the basis of sex in the sale, rental or financing of a dwelling.

The regulation provides specific guidance for newspaper publishers, other publishers of advertisements and real estate firms, banks, savings and loan associations and other individuals, firms or corporations concerning nondiscrimination in advertising the sale, rental, financing or other services in connection with residential real estate, as provided in Section 804(c) of Title VII of the Civil Rights Act of 1964.

DATE: April 22, 1977.

FURTHER INFORMATION CONTACT:

Walter Stern, Special Assistant, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, Room 3110, Department of Housing and Urban Development, 401 7th Street, N.W., Washington, D.C. 20540. Telephone: (202) 755-4773.

COMPLIANCE DATE: The Advertising Guidelines for Fair Housing issued on April 7, 1972 (37 FR 6700), have provided substantive guidance with regard to compliance with Section 804(c) of Title VII. Based on experience in administering Title VII, and the efforts of other Federal agencies to ensure fair housing, the Department has determined that the Guidelines should be reinforced as Regulations in order to obtain better enforcement and to ensure consistency in obtaining compliance with Section 804(c).

The present guidelines were published prior to enactment of the Housing and Community Development Act of 1974, which amended Title VII to prohibit discrimination in housing based on sex. These regulations will provide the media, financial institutions, and persons advertising housing with specific information concerning ways to avoid discrimination on the basis of sex.

Additionally, the regulation will guide all advertising media, advertising agencies and all other persons who use advertisements in complying with prescriptions against discrimination in advertising in Title VII. The regulation also describes the manner the Department will review in evaluating compliance with Title VII in connection with complaints alleging discriminatory housing practices involving advertising. Consistent with HUD policies and procedures relating to its programs, compliance with these regulations is likely to affect participation in HUD programs wherever experience in affirmative marketing or compliance with fair housing requirements is specified in the regulations as one of the criteria in awarding contracts or selecting among competing proposals.

Notice of a proposed amendment to Title 24 to issue these regulations as Part 100 was published in the Federal Register on September 22, 1976 (41 FR 55529) and comments were received from interested persons and organizations. Consideration was given to each comment. Comments of general nature applicable to several sections of the Regulation are discussed below. Additionally, comments referring to specific sections only are addressed separately.

Coverage of the Regulation

There was a comment from civil rights organizations that the regulation should apply to all advertising regardless of media used. It is the intent of the rule to cover all forms of media (printed, television, radio, etc.). The wording of § 100.10 has been revised to reflect this intent. Additionally, § 100.39(a) and relevant tables have been revised, as discussed in detail below, to clarify the applicability of the fair housing law, statement and slogan to radio and television advertising.

Applicability of the Regulation

There was comment from both civil rights and industry representatives on the issue of applicability and authority of the regulation. Civil rights organizations maintained that the language of the regulation should be mandatory throughout (rebutting the "must" for "should" in describing practices to be avoided or encouraged) and that the fair housing statement should be uniform and mandatory. Representatives of the media and financial institutions, on the other hand, objected to the issuance of the guidelines as a regulation, and to specific provisions of the regulation, as potential infringements on First Amendment rights. Civil rights

organizations argued that the regulation was necessary to ensure that the fair housing law was being enforced in a uniform manner and that the regulation was necessary to ensure that the fair housing law was being enforced in a uniform manner.

An individual who is a member of a racial or ethnic group is prohibited from being a member of a racial or ethnic group in the housing market. The regulation provides that the fair housing law is a federal law and that the fair housing law is a federal law and that the fair housing law is a federal law.

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interpretation was underscored in numerous comments by civil rights and industry representatives. There were various comments for example, that the very name of a street (such as Martin Luther King Avenue in Washington, D.C.) on which housing advertised may be located could be viewed as discriminatory advertising under the strictest interpretation of § 109.20. Such construction is neither intended nor required by that Section, which states that certain words, phrases, symbols and forms "should be avoided." The example given, though extreme, illustrates that the circumstances under which certain words, etc., should be avoided to preclude violation of Title VIII will vary; judicious interpretation is both allowable and necessary pursuant to the language of this provision of the rule. Similarly, as discussed below, judicious interpretation is intended with respect to other provisions of the rule, including § 109.25, § 109.20(b), and other portions of § 109.20.

Areas Requiring Further Issuances

There were numerous detailed technical suggestions for further elaboration of criteria for use of the Equal Housing Logo; further standards, qualitative and quantitative, for use of models; and establishment of procedures to monitor compliance with the regulation, particularly §§ 109.25 and 109.30. It is the judgment of the Department that such matters more properly should be addressed in handbooks as other issuances being prepared to interpret the regulation. It is the function of the rule to define the broad areas of practice which will be considered in investigating complaints rather than to establish detailed criteria and standards with respect to each practice addressed.

Prohibition Against Steering and Blockbusting

Comment was made that advertising conducive to steering or blockbusting should be addressed in the rule. Practices constituting steering or blockbusting in advertising and other areas of real estate practice will be addressed in a substantive rule being developed to define prohibited practices relating to sales and rentals pursuant to Title VIII.

Exemption of Religious Organizations

A national organization representing a major religious denomination objected to the failure of the rule to indicate the exemption contained in Section 807 of Title VIII relating to housing which is owned by a religious organization and operated for other than commercial

purposes. That Section provides that nothing in Title VIII prohibits religious organizations from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion or from giving preference to such persons unless membership in the religion is restricted on account of race, color or national origin. Since Section 807 applies to all rules issued pursuant to Title VIII, the Department has determined that incorporation of a Section in its regulations regarding such organizations is unnecessary.

Applicability to Mobile Homes

Question was raised as to applicability of the rule to mobile homes. Pursuant to the definition of "dwelling" in Title VIII (Section 802(b)) mobile homes, including the leasing of land for mobile homes, are covered by Title VIII and all regulations implementing Title VIII.

The following areas of comment addressed specific sections of the proposed rule:

109.10 Purpose.

Question was raised by a financial institution whether this section provides for coverage of lending institutions. The intent that the rule apply to such institutions is clear in the reference in this Section to "all advertising media, advertising agencies, and all other persons who use advertising . . ." with respect to the sale, rental, or financing of a dwelling . . .

109.20 Use of words, phrases, sentences, and visual aids.

109.20(a) Words descriptive of dwelling, landlord, and tenants. In response to comment that inclusion of "female residence" and "male residence" among examples of words to be avoided would restrict advertising of certain dormitory facilities, these terms have been deleted from this subsection.

Subsection 109.20(b)(5) has also been revised to resolve any confusion regarding the application of this regulation to dwellings used by educational institutions for dormitory facilities.

109.20(b)(6) Catch words.

There were two major areas of comment on this section. Civil rights groups maintained that the examples given were not sufficiently inclusive and recommended addition of several specific terms, with emphasis on terms which might be discriminatory in effect if not in intent. Newspaper industry representatives, on the other hand, criticized the subsection as too vague in

requiring too much discretion on the part of the advertisers with regard to words not identified in the subsection and in providing inadequate interpretation of the phrase "discriminatory context."

As clearly indicated in the introduction to § 109.20, the words, phrases, etc., identified in its subsections are intended as examples of words which might be discriminatory, directly or indirectly, and which "should, therefore, be avoided to eliminate their discriminatory effect." They are neither intended to be all-inclusive nor to preclude phrases, in addition to those identified, which might be discriminatory in impact under certain circumstances. In fact, § 109.20(b)(6), in prescribing against avoidance of terms "used in a discriminatory context", addresses discriminatory effect as well as intent. Additionally, the examples given, as well as other words and phrases which may be discriminatory in certain instances, are intended to be evaluated within the context in which they are used. Clearly, words and phrases which may be discriminatory in some instances may be neutral when used in other circumstances. As indicated in the discussion on the applicability of the rule, this regulation has been formulated to take cognizance of First Amendment considerations, and of the fact that, even in the absence of such considerations, an attempt to be all-inclusive would be counterproductive. In view of the variables determining whether certain phrases are discriminatory, an attempt to utilize § 109.20(b)(6) to list comprehensively (rather than to illustrate) words, phrases, etc., which might be discriminatory in intent or effect (or to define all circumstances which might give rise to a discriminatory context) would be an impossible and exclusionary task. Moreover, the added specificity proposed by industry and some civil rights groups and undoubtedly would escalate the concerns about possible infringements upon freedom of speech. In structuring the regulation and this subsection the Department has decided to provide illustrations of phrases and conduct which will be given substantial weight in investigations.

109.20(e) Directions to real estate.

There was considerable comment, and some confusion, about this subsection. Several commenters construed this subsection as prohibiting use of directions or maps in advertisements. This interpretation reflects neither the intent nor the content of the provision. The subsection does not prohibit or preclude the use of directions; rather, it

provides that references which may be discriminatory under certain circumstances when used in directions could be avoided. Again, the examples even illustrate usage which would be subject to review and are intended to encourage discretion, not to establish fixed rules for the provision of directions to housing being marketed. Question was raised by several commenters regarding (1) use of streets named after leaders of racial, religious or ethnic groups; and (2) housing developments sponsored or built by religious institutions and named after such institutions. The use of street names, when such use is clearly necessary in providing directions, is obviously not precluded. As discussed above, housing developed by a religious organization for non-commercial purposes would be exempt from Title VIII coverage and this regulation pursuant to Section 807 of the statute.

109.20(f) *Area (location) description.*

This section, providing that area descriptions should not include names of facilities catering to particular racial, national origin or religious groups or to facilities used by only one sex, provoked comment that industry should rightfully be able to inform consumers of neighborhood facilities which might be attractive to them. However, reference to facilities which might constitute a positive signal to some potential customers frequently carries a negative message, intentionally or effectively, to those not normally included by virtue of race, sex, religion or national origin in the membership of the facilities named. Consequently, except in unusual and clearly justifiable circumstances, such facilities should not be mentioned.

109.25 *Selective use of advertising media or content.*

There was comment that the general restrictions against selective use of advertising in this section appear to be in direct conflict with the requirements for affirmative efforts to advise persons of the availability of credit in specific areas serviced by lenders and to inform socially and economically disadvantaged persons of the existence of special purpose programs under the Community Reinvestment Act and the Equal Credit Opportunity Act. The Department does not intend that anything in these regulations be interpreted to limit the affirmative efforts of advertisers to expand housing and credit opportunities for low and moderate income persons, members of minority groups and other socially disadvantaged groups.

Additionally, as provided in § 109.10(b), the regulation is not intended to preclude advertising intended to implement an affirmative marketing program or undertaken to remedy the effects of prior discrimination. Additionally, comments indicated misinterpretation of the admonition against sole use of English media in areas where non-English media cater to non-English speaking persons. It is not intended that, when such non-English media exist, they must be used, or that ads must be placed in each non-English medium. On the other hand, the failure to utilize one or more methods for advertising to non-English speaking persons will be given weight in connection with allegations that a group covered by Title VIII has been denied housing opportunities. Again, this is a matter requiring use of judgment based on evaluation of demographic factors, predominant language in specific areas and interpretation of the regulation in specific circumstances.

Comment was made by an individual correspondent on the use of "priority lists" determined on the basis of a lottery type drawing from all applications as a means for selecting buyers. It was suggested that, since only a selected number of people can participate and since buyers are selected on the basis of the lottery rather than of the time at which an acceptable offer is tendered, such priority lists are a selective use of advertising which should be covered under this section. The Department does not believe that these practices constitute the "selective use of advertising media" under this regulation. However, where a method of selecting buyers is designed to preclude persons from purchasing dwellings because of race, color, religion, sex or national origin, such practices would constitute a discriminatory practice under Title VIII.

109.25(a) *Selective geographic advertisements.*

Comments from industry representatives indicated a misunderstanding of this provision. This section describes the use of advertising, such as use of limited circulation editions or of strategically placed billboards, in a manner which, intentionally or effectively, fails to get the message to (or targets the message away from) persons based on race, color, religion, sex or national origin. It is clear from the language of the subsection that the provision does not mandate or suggest placing billboards in all communities or advertising in an unlimited number of newspapers. The

provision does suggest sufficient use of individual newspapers to assure that no persons are excluded from information about housing being advertised on the basis of race, color, religion, sex or national origin.

One comment suggested revising § 109.25(a) to delete references regarding the placement of advertising in particular geographic coverage editions of major metropolitan newspapers ("zoned editions") or in newspapers of limited circulation. This comment maintained that the placement of advertising in selected editions assures the reader information of local importance and relieves the advertiser of the additional cost of advertising in all editions. The Department recognizes these legitimate concerns and that under certain circumstances zoned editions may be permissible. However, the Department believes that a Title VIII violation occurs whenever the advertiser determines the manner for advertising because of the race, color, religion, sex or national origin of persons who receive or do not receive a publication or where such determination has the effect of discriminating because of the race, color, religion, sex or national origin of such recipients or non-recipients. Therefore, no revision has been made with regard to this section.

109.30 *Fair housing policy and practices.*

Section 109.30 identifies specific policies and practices, such as use of the fair housing logotype and of publishers' notice of adherence to Title VII, for advertisers and publishers. The rule has been revised to state specifically that, in investigation of complaints, adherence to these policies and practices will be considered.

In response to a suggestion by a civil rights group and a local human rights agency, § 109.30 has been revised to encourage real estate advertisers and publishers to give notice of the coverage of any local fair housing or human rights ordinance addressing discrimination in the sale, rental or financing of housing. While the Department has no authority to require or enforce such action, the value of encouraging notice of compliance with local laws is inherent in the fact that frequently such laws are broader in coverage and enforcement powers than Title VIII.

109.30(a) *Use of equal housing opportunity logotype, statement or slogan.*

There were numerous comments indicating lack of clarity in this subsection and the accompanying tables in the appendix. Accordingly, the

wording of the section and Tables I and II has been revised to remove ambiguities about suggested use of the logotype, statement, or slogan and to clarify their applicability to advertising in various types of media. In order to eliminate ambiguity about the meaning of the term "4 column inches", the reference to this term has been clarified in Table I.

There was comment by industry representatives objecting to the stipulation in Table I that the logotype must be equal in size to any commercial logotype used in an advertisement. Additionally, a study submitted by a regional council of governments documented widespread misinterpretation of the "same size" provision which is included in the present guidelines and the proposed regulations. The study found that, in the Washington metropolitan area, 94% of newspaper advertisers using the EHO logotype did so by applying the same size rule and concurrently reducing all logotypes to a smaller size than otherwise provided in Table I. In response to these comments, the following revisions have been made with respect to the logo (Table I): (1) In space advertising (advertising in regularly printed media, such as newspapers or magazines), the "same size" provision has been substituted by the minimum size standards, which should be applied without exception; (2) in all other advertising, the "same size" provision would continue to apply.

109.25(c) and 109.30(b) Use of human models.

There were several comments with respect to provisions in § 109.30(b) and § 109.25(c) relating to use of human models. Section 109.25(c) is intended to preclude selective use of human models in advertising for the purpose of attracting (or discouraging) certain groups covered by Title VIII with respect to certain housing or neighborhoods. Obviously, models representing one group in advertising directed to such a group would have just this result if not balanced by more representative use of models in advertising placed in media reaching other population groups.

With respect to § 109.30(b), there was comment that the phrase "models should be clearly definable as reasonably representing" is not clear. Civil rights groups commented that models used should reflect, in numbers, the exact percentage of the various covered groups in the population, a suggestion which is clearly unworkable. The term "reasonably representing" is intended to assure that models will

convey a message of general inclusiveness of persons covered by Title VIII, not literal display of each minority group. For example, use of two white models, one male and one female would not convey such inclusiveness. In a small town with no minority groups other than blacks, however, use of two models of different sexes, one white and one black, would "reasonably represent" majority and minority groups of both sexes.

Additionally, there was comment that there should be qualitative as well as quantitative standards for use of models to assure portrayal of models in a setting which projects an "equal welcome" to the various groups represented. Accordingly, § 109.30(b) has been revised to provide that models where used should portray persons in an "equal social setting," i.e., in a manner avoiding any implication that persons of a particular race, color, religion, sex or ethnic group would be less desirable or less welcome than others.

109.30(d) Publishers' notice.

There was comment that the publishers' notice should be required on every page carrying classified real estate advertising: that the fair housing statement should be eliminated; and that a uniform slogan and logo should be required instead. As indicated, the Department takes the position that requirement of uniform wording or a standard logo within an advertisement raises serious first amendment issues. Further, it is the position of the Department that use of the fair housing statement in all ads of specific size is a more visible and effective declaration of adherence to Title VIII than the use of the publishers' notice on each real estate advertising page.

The Department has determined that this Regulation will not have an environmental impact, as defined in the "Procedures for Protection and Enhancement of Environmental Quality." A copy of this finding is available for inspection and copying in the Office of the Rules Docket Clerk at the above address. This regulation has been evaluated and has been found not to have major economic consequences for the general economy or for individual industries, geographic regions, or levels of government.

This rule is listed as item number FHEO-4-78 in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, Subchapter B of Chapter I of Title 24 of the Code of Federal Regulations is amended by including a new Part 109 to read as follows:

PART 109—FAIR HOUSING ADVERTISING

Sec.

- 109.5 Policy.
- 109.10 Purpose.
- 109.15 Definitions.
- 109.18 Scope.
- 109.20 Use of words, phrases, sentences and visual aids.
- 109.25 Selective use of advertising media and content.
- 109.30 Fair housing policies and practices.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*)

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage services on account of race, color, religion, sex or national origin. Section 804(c) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex or national origin, or an intention to make such preference, limitation or discrimination.

§ 109.10 Purpose.

The purpose of these regulations is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish or cause to be made, printed, or published any advertisement with respect to the sale, rental, or financing of a dwelling, in compliance with the requirements of Title VIII. These regulations also describe the matters this Department will review in evaluating compliance with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(c) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any

such building, structure, or portion thereof.

(d) "Family" includes a single individual.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

(f) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) "Discriminatory housing practice means an act that is unlawful under Sections 804, 805, or 806 of Title VIII of the Civil Rights Act of 1968.

§ 108.16 Scope.

(a) *General.* This part describes the matters the Assistant Secretary will review in evaluating compliance with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(1) *Advertising Media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(2) *Persons Placing Advertisements.* A failure by persons placing advertisements to comply with the provisions in this part when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements will be a basis for concluding that a violation of Section 804 has occurred.

(b) *Affirmative Advertising Efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

§ 108.20 Use of words, phrases, sentences, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory intent. Their use

should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under Title VIII, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the Title and to establish a need for seeking resolution of the complaint. If it is apparent from the context of the usage that discrimination within the meaning of the Title is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenant.* White private home, Colored home, Jewish home, Hispanic residence.

(b) *Words indicative of race, color, religion, sex or national origin.*

(1) *Race*—Negro, Black, Caucasian, Oriental, American Indian.

(2) *Color*—White, Black, Colored.

(3) *Religion*—Protestant, Christian, Catholic, Jew.

(4) *National Origin*—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*—the exclusive use of words in advertisements including those involving the rental of separate units in a single or multi-family dwelling stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section shall restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Catch words.* Words such as restricted, ghetto, and disadvantaged should be avoided. Also, words and phrases used in a discriminatory context should be avoided, e.g., "private", "integrated", "traditional", "board approval" or "membership approval".

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its inclusion of minorities (signal to whites) should not be used. Specific directions which make reference to a racial or national origin significant area may

indicate a preference and should not be used. References to a synagogue, congregation or parish may also indicate a religious preference and should not be used.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

§ 108.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of Title VIII. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are additional examples of the selective use of advertising which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in

advertising in publications or other media directed at one particular sex. Such selective advertising may involve the use of human models of members of only one sex in displays, photographs or drawings to indicate preferences for one sex or the other.

§ 102.29 Fair Housing Policy and Practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under Title VIII.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area and both sexes. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of Local Laws.* Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) *Notification of Fair Housing Policy.*—(1) *Employees.* All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or

financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(2) *Clients.* All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix). The notice can include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

Appendix

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan. In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
1/2 page or larger	2 x 2
1/4 page up to 1/2 page	1 x 1
4 column inches to 1/2 page	1/2 x 1/2
Less than 4 column inches	(*)

* Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which state that the housing is available to all without regard to race, color, religion, sex or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan Equal Housing Logotype:



EQUAL HOUSING OPPORTUNITY

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act of 1968 which makes it illegal to advertise "any preference, limitations, or discrimination based on race, color, religion, sex, or national origin, or intention to make any such preferences, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

Issued at Washington, D.C., August 13, 1980.

Starting Tucker.

Assistant Secretary for Fair Housing and Equal Opportunity.

(FR Doc. 80-25198 Filed 8-25-80; 8:45 am)
BILLING CODE 4210-01-01

V. TITLE VI



CLASS OUTLINE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

- I. INTRODUCTION AND OBJECTIVES
- II. WHAT TITLE VI SAYS
- III. DISCRIMINATION PROHIBITED
 - A. SITE SELECTION
- IV. FmHA PROGRAMS APPLICABLE TO TITLE VI
- V. TITLE VI COMPLIANCE REQUIREMENTS
 - A. NONDISCRIMINATION AGREEMENT
 - B. COVENANTS
 - C. PUBLIC DISEMINATION OF TITLE VI INFORMATION
 - D. DATA AND INFORMATION REQUIREMENTS
- VI. PROCEDURES FOR ENFORCEMENT AND COMPLIANCE
 - A. COMPLIANCE REVIEWS
 - 1. PRE-AWARD
 - 2. POST AWARD
 - 3. COMPLIANCE REVIEW OFFICER
- VII. ACTIVITIES
 - A. CASE STUDIES
 - B. QUESTIONS AND ANSWER PERIOD

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

U. S. CONGRESS
CIVIL RIGHTS ACT
APRIL 9, 1866



Public Law 88-352
88th Congress, H. R. 7152
July 2, 1964

An Act

78 STAT. 241.

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

Civil Rights Act
of 1964.

TITLE VI—NONDISCRIMINATION IN FEDERAL~~LY~~
ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Rules governing
grants, loans,
and contracts.

Approval by
President.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express find-

July 2, 1964

Pub. Law 88-352

78 STAT. 253.

ing on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report. Termination.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section. Judicial review.
60 Stat. 243.
5 USC 1009.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Title 28
Judicial Administration

Chapter 1
Department of Justice (Order No. 670-76)

Part 42
Nondiscrimination:
Equal Employment Opportunity:
Policies and Procedures

COORDINATION OF ENFORCEMENT OF NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Federal Programs Section
WASHINGTON, D.C. 20530



Title 3—The President
EXECUTIVE ORDER 11764

**Nondiscrimination in Federally Assisted
Programs**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d—2000d-4, prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving Federal financial assistance. The agencies which extend such assistance have primary responsibility for effectuating Title VI. Although the Attorney General is presently responsible for coordinating enforcement of Title VI, it is appropriate to clarify and broaden the role of the Attorney General with respect to Title VI enforcement.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including section 301 of title 3 of the United States Code, it is ordered as follows:

Section 1. The Attorney General shall coordinate enforcement by Federal departments and agencies of Title VI of the Civil Rights Act of 1964. He shall prescribe standards and procedures regarding implementation of Title VI and shall assist the departments and agencies in accomplishing effective implementation. He may adopt such rules and regulations and issue such orders as he deems necessary to carry out his functions under this order.

Sec. 2. (a) Each Federal department and agency shall cooperate with the Attorney General in the performance of his functions under this order and shall furnish him such reports and information as he may request.

(b) Title VI compliance reviews and investigations shall be conducted by the departments and agencies in accord with standards and procedures established by the Attorney General.

(c) Whenever a department or agency ascertains noncompliance or probable noncompliance with Title VI, steps to obtain compliance by voluntary means or to enforce title VI requirements shall be carried out in accord with standards and procedures established by the Attorney General.

Sec. 3. The authority vested in the President by section 602 of Title VI, 42 U.S.C. 2000d-1, to approve rules, regulations, and orders of general applicability is hereby delegated to the Attorney General.

Sec. 4. Executive Order No. 11247 of September 24, 1965, is hereby superseded.

The White House.
January 21, 1974.



On July 29, 1976, a document was published in the **FEDERAL REGISTER** (41 FR 31550) proposing Subpart F, Part 42, Title 28, Code of Federal Regulations. The proposed regulations set forth minimum requirements for implementation by Federal agencies of Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d-d-4). The proposal was based upon Executive Order 11764 which delegates to the Attorney General authority to coordinate and assist agency enforcement of Title VI, to prescribe standards and procedures regarding such enforcement, and to issue necessary regulations and orders. All comments submitted with respect to the proposed regulations were given due consideration.

As a result of comments received, the following changes are made in the regulations. In addition, typographical errors are corrected.

1. The designation of racial/ethnic categories in § 42.402(e) is revised to conform with the recommendation of the Office of Management and Budget Ad Hoc Committee on Racial/Ethnic Categories.

2. Section 42.403 is amended by addition of a provision pointing out the obligation of each federal agency to list in an appendix to its Title VI regulation the statutes authorizing federal financial assistance to which the regulation applies.

3. The first complaint reporting date set forth in § 42.408(d) is changed to January 1, 1977, since final publication of these regulations makes the original date of October 1, 1976 inapplicable.

4. Section 42.412(b) is amended to reflect the existing practice of routinely submitting Department of Justice interagency survey reports the Office of Management and Budget.

Accordingly, with these changes and additions, it is hereby ordered that the proposed Subpart F is adopted as set forth below.

Dated: November 23, 1976.

Edward H. Levi,
Attorney General.

**FEDERAL REGISTER, VOL. 41, NO. 232 - WEDNESDAY,
DECEMBER 1, 1976
Pp. 52669 - 52672**

**Subpart F—
Coordination of Enforcement
of Nondiscrimination
in Federally Assisted Programs**

Sec.

- 42.401 Purpose and application.**
- 42.402 Definitions.**
- 42.403 Agency regulations.**
- 42.404 Guidelines.**
- 42.405 Public dissemination of Title VI information.**
- 42.406 Data and information collection.**
- 42.407 Procedures to determine compliance.**
- 42.408 Complaint procedures.**
- 42.409 Employment practices.**
- 42.410 Continuing state programs.**
- 42.411 Methods of resolving noncompliance.**
- 42.412 Coordination.**
- 42.413 Interagency cooperation and delegations.**
- 42.414 Federal agency staff.**
- 42.415 Federal agency Title VI enforcement plan.**

Authority: This subpart is issued pursuant to
Executive Order 11764 (39 FR 2575).

RULES AND REGULATIONS

§ 42.401 Purpose and application.

The purpose of this subpart is to insure that federal agencies which extend financial assistance properly enforce Title VI of the Civil Rights Act of 1964 and similar provisions in federal grant statutes. Enforcement of the latter statutes is covered by this subpart to the extent that they relate to prohibiting discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title VI. Responsibility for enforcing Title VI rests with the federal agencies which extend financial assistance. In accord with the authority granted the Attorney General under Executive Order 11764, this subpart shall govern the respective obligations of federal agencies regarding enforcement of Title VI. This subpart is to be used in conjunction with the 1965 Attorney General Guidelines for Enforcement of Title VI, 28 CFR 50.3.

§ 42.402 Definitions.

For purpose of this subpart:

(a) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4. Where appropriate, this term also refers to the civil rights provisions of other federal statutes to the extent that they prohibit discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title VI itself.

(b) "Agency" or "federal agency" refers to any federal department or agency which extends federal financial assistance of the type subject to Title VI.

(c) "Program" refers to programs and activities receiving federal financial assistance of the type subject to Title VI.

(d) "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(e) Where designation of persons by race, color or national origin is required, the following designations shall be used:

(1) *Black, not of Hispanic Origin.* A person having origins in any of the black racial groups of Africa.

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin.* A person having origins in any of the original people of Europe, North Africa, or the Middle East. Additional subcategories based on national origin or primary language spoken may be used where appropriate, on either a national or a regional basis. Subparagraphs (1) through (5), inclusive, set forth in this section are in conformity with the OMB Ad Hoc Committee on Race-Ethnic Categories' recommendations. To the extent that said designations are modified by the OMB Ad Hoc Committee, subparagraphs (1) through (5), inclusive, set forth in this section shall be interpreted to conform with those modifications.

(f) "Covered employment" means employment practices covered by Title VI. Such practices are those which (1) Exist in a program where a primary objective of the federal financial assistance is to provide employment, or (2) Cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

§ 42.403 Agency regulations.

(a) Any federal agency subject to Title VI which has not issued a regulation implementing Title VI shall do so as promptly as possible and, no later than the effective date of this subpart, shall submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(b) Any federal agency which becomes subject to Title VI after the effective date of this subpart shall, within 60 days of the date it becomes subject to Title VI, submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(c) Regarding issuance or amendment of its regulation implementing Title VI, a federal agency shall take the following steps:

(1) Before publishing a proposed regulation or amendment in the Federal Register,

RULES AND REGULATIONS

submit it to the Assistant Attorney General, Civil Rights Division;

(2) After receiving the approval of the Assistant Attorney General, publish the proposed regulation or amendment in the Federal Register for comment;

(3) After final agency approval, submit the regulation or amendment, through the Assistant Attorney General, to the Attorney General for final approval. (Executive Order 11764 delegates to the Attorney General the function, vested in the President by section 602 of Title VI, 42 U.S.C. 2000d-1, of approving Title VI regulations and amendments to them.)

(d) The Title VI regulation of each federal agency shall be supplemented with an appendix listing the types of federal financial assistance, i.e., the statutes authorizing such assistance, to which the regulation applies. Each such appendix shall be kept up-to-date by amendments published, at appropriate intervals, in the Federal Register. In issuing or amending such an appendix, the agency need not follow the procedure set forth in paragraph (c) of this section.

§ 42.404 Guidelines.

(a) Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI. Such guidelines shall be published within three months of the effective date of this subpart or of the effective date of any subsequent statute authorizing federal financial assistance to a new type of program. The guidelines shall describe the nature of Title VI coverage, methods of enforcement, examples of prohibited practices in the context of the particular type of program, required or suggested remedial action, and the nature of requirements relating to covered employment, data collection, complaints and public information.

(b) Where a federal agency determines that Title VI guidelines are not appropriate for any type of program to which it provides financial assistance, the reasons for the determination shall be stated in writing and made available to the public upon request.

§ 42.405 Public dissemination of Title VI information.

(a) Federal agencies shall make available and, where appropriate, distribute their Title VI regulations and guidelines for use by federal em-

ployees, applicants for federal assistance, recipients, beneficiaries and other interested persons.

(b) State agency compliance programs (see § 42.110) shall be made available to the public.

(c) Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the non-discrimination requirements of Title VI, summarize those requirements, note the availability of Title VI information from recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on Title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.

(d) (1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to Title VI.

§ 42.406 Data and information collection.

(a) Except as determined to be inappropriate in accordance with paragraph (f) of this section or § 42.404(b), federal agencies, as a part of the guidelines required by § 42.404, shall in regard to each assisted program provide for the collection of data and information from

RULES AND REGULATIONS

applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI.

(b) Pursuant to paragraph (a) of this section, in conjunction with new applications for federal assistance (see 28 CFR 50.3 (c) IIA) and in any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance (see 28 CFR 50.3(c) II B), and at other times as appropriate, federal agencies shall require applicants and recipients to provide relevant and current Title VI information. Examples of data and information, which to the extent necessary and appropriate for determining compliance with Title VI, should be required by agency guidelines are as follows:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) The population eligible to be served, by race, color and national origin;

(3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin

(c) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data is necessary or appropriate, for understanding information required in paragraph (b) of this section, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

(d) Pursuant to paragraphs (a) and (b) of this section, in all cases, federal agencies shall require:

(1) That each applicant or recipient promptly notify the agency upon its request of any lawsuit filed against the applicant or recipient alleging discrimination on the basis of race, color or national origin, and that each recipient notify the agency upon its request of any complaints filed against the recipient alleging such discrimination;

(2) A brief description of any applicant's or recipient's pending applications to other federal agencies for assistance and of federal assistance being provided at the time of the application or requested report;

(3) A statement by any applicant describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews;

(4) A written assurance by any applicant or recipient that it will compile and maintain records required, pursuant to paragraphs (a) and (b) of this section, by the agency's guidelines or other directives.

(e) Federal agencies should inquire whether any agency listed by the applicant or recipient pursuant to paragraph (d)(2) of this section has found the applicant or recipient to be in noncompliance with any relevant civil rights requirement.

(f) Where a federal agency determines that any of the requirements of this section are inapplicable or inappropriate in regard to any program, the basis for this conclusion shall be set forth in writing and made available to the public upon request.

§ 42.407 Procedures to determine compliance.

(a) *Agency staff determination responsibility.* All federal agency staff determinations of Title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office. Where federal agency responsibility for approving applications or specific projects has been assigned to regional or area offices, the agency shall include personnel having Title VI review responsibility on the staffs of such offices and such personnel shall perform the functions described in paragraphs (b) and (c) of this section.

(b) *Application review.* Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with Title VI (see 28 CFR 50.3(c) II A). The basis for such a

determination under "the agency's own investigation" provision (see 28 CFR 50.3(c) II A(2)), shall be submission of an assurance of compliance and a review of the data submitted by the applicant. Where a determination cannot be made from this data, the agency shall require the submission of necessary additional information and shall take other steps necessary for making the determination. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Where the requested assistance is for construction, a pre-approval review should determine whether the location and design of the project will provide service on a nondiscriminatory basis and whether persons will be displaced or relocated on a nondiscriminatory basis.

(c) *Post-approval review.* (1) Federal agencies shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications (see 28 CFR 50.3(c) II A), applications for continuation or renewal of assistance (28 CFR 50.3(c) II B) and all other federally assisted programs. Such reviews are to include periodic submission of compliance reports by recipients to the agencies and, where appropriate, field reviews of a representative number of major recipients. In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review procedures and standards of evaluation. Additionally, agencies should consider incorporating a Title VI component into general program reviews and audits.

(2) The results of post-approval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible.

(d) *Notice to assistant attorney general.* Federal agencies shall promptly notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews or post-approval compliance reviews.

§ 42.408 Complaint procedures.

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints. The complaint procedures shall provide for notification in writing to the

complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a state agency, for investigation.

(b) Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency or advise the complainant.

(c) Where a federal agency requires or permits recipients to process Title VI complaints, the agency shall ascertain whether the recipients' procedures for processing complaints are adequate. The federal agency shall obtain a written report of each such complaint and investigation and shall retain a review responsibility over the investigation and disposition of each complaint.

(d) Each federal agency shall maintain a log of Title VI complaints filed with it, and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log. Federal agencies shall report to the Assistant Attorney General on January 1, 1977, and each six months thereafter, the receipt, nature and disposition of all such Title VI complaints.

§ 42.409 Employment practices.

Enforcement of Title VI compliance with respect to covered employment practices shall not be superseded by state and local merit systems relating to the employment practices of the same recipient.

§ 42.410 Continuing state programs.

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of Title VI responsibilities to designated state personnel and comply with the minimum standards

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established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the Title VI compliance of the state agencies and the sub-recipient.

§ 42.411 Methods of resolving noncompliance.

(a) Effective enforcement of Title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 CFR 50.3. Each agency shall establish internal controls to avoid unnecessary delay in resolving noncompliance, and shall promptly notify the Assistant Attorney General of any case in which negotiations have continued for more than sixty days after the making of the determination of probable noncompliance and shall state the reasons for the length of the negotiations.

(b) Agreement on the part of a noncomplying recipient to take remedial steps to achieve compliance with Title VI shall be set forth in writing by the recipient and the federal agency. The remedial plan shall specify the action necessary for the correction of Title VI deficiencies and shall be available to the public.

§ 42.412 Coordination.

(a) The Attorney General's authority under Executive Order 11764 is hereby delegated to the Assistant Attorney General, Civil Rights Division. In exercising that authority, the Assistant Attorney General shall be subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General.

(b) Consistent with this subpart and the 1965 Attorney General Guidelines, 28 CFR 50.3, the Assistant Attorney General may issue such directives and take such other action as he deems necessary to insure that federal agencies carry out their responsibilities under Title VI. In addition, the Assistant Attorney General will routinely provide to the Director of the Office of Management and Budget copies of all inter-agency survey reports and related materials prepared by the Civil Rights Division that evaluate the effectiveness of an agency's Title VI compliance efforts. Where cases or matters are referred to the Assistant Attorney General

for investigation, litigation or other appropriate action, the federal agencies shall, upon request, provide appropriate resources to the Assistant Attorney General to assist in carrying out such action.

§ 42.413 Interagency cooperation and delegations.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more federal agencies, or where two or more federal agencies cooperate in administering assistance for a given class of recipients, the federal agencies shall:

(1) Jointly coordinate compliance with Title VI in the assisted programs, to the extent consistent with the federal statutes under which the assistance is provided; and

(2) Designate one of the federal agencies as the lead agency for Title VI compliance purposes. This shall be done by a written delegation agreement, a copy of which shall be provided to the Assistant Attorney General and shall be published in the Federal Register.

(b) Where such designations or delegations of functions have been made, the agencies shall adopt adequate written procedures to assure that the same standards of compliance with Title VI are utilized at the operational levels by each of the agencies. This may include notification to agency personnel in handbooks, or instructions on any forms used regarding the compliance procedures.

(c) Any agency conducting a compliance review or investigating a complaint of an alleged Title VI violation shall notify any other affected agency upon discovery of its jurisdiction and shall subsequently inform it of the findings made. Such reviews or investigations may be made on a joint basis.

(d) Where a compliance review or complaint investigation under Title VI reveals a possible violation of Executive Order 11246, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), or any other federal law, the appropriate agency shall be notified.

§ 42.414 Federal agency staff.

Sufficient personnel shall be assigned by a federal agency to its Title VI compliance program to ensure effective enforcement of Title VI

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§ 42.115 Federal agency Title VI enforcement plan.

Each federal agency subject to Title VI shall develop a written plan for enforcement which sets out its priorities and procedures. This plan shall be available to the public and shall address matters such as the method for selecting recipients for compliance reviews, the establishment of timetables and controls for such reviews, the procedure for handling complaints, the allocation of its staff to different compliance functions, the development of guidelines, the determination as to when guidelines are not appropriate, and the provision of civil rights training for its staff.

Effective date: This subpart shall become effective on or before January 3, 1976.

[FR Doc. 76-35130 Filed 11-30-76; 8:45 a.m.]

Correction

In FR Doc. 76-35130 appearing at page 52669 in the issue for Wednesday, December 1, 1976, the effective date appearing in the third column of page 52672 should have read "Effective date: January 3, 1977."

FEDERAL REGISTER,
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TUESDAY, DECEMBER 7, 1976

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

(Nondiscrimination in Federally Assisted Programs)

A. The Act states the following:

"NO PERSON IN THE UNITED STATES SHALL ON THE GROUND OF RACE, COLOR, OR NATIONAL ORIGIN, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

B. The Act prohibits unequal treatment because of race, color, or national origin in:

- (1) priority, quality, quantity, methods or charges for services;
- (2) use, occupancy, or benefit;
- (3) participation in the service or benefit available; or
- (4) use, occupancy or benefit of any structure facility or improvement provided by FmHA financial assistance

- C. Site Selection -- A recipient shall not select sites or locate facilities with the purpose or effect of excluding and denying individuals the benefits of the facility or services to be provided because of race, color, or national origin.

Refer to FmHA Ins. 1901-E, Sec. 1901.202(a) for more specific prohibitions against discrimination in delivering services or benefits.

- D. FmHA programs which must comply with Title VI regulations (Refer to FmHA Ins. 1901-E, Sec. 1901.204(a)).

1. Farm Ownership/Nonfarm Enterprises or Recreational Facilities
2. Operating Loans/Nonfarm Enterprises or Recreational Facilities
3. Economic Opportunity Individual Loans/Nonagricultural Enterprises
4. Individual Recreational Loans
5. Water and Waste Disposal Facilities
6. Community Facility Projects
7. Industrial Development Grant Parks
8. Watershed Projects
9. Recreation Associations
10. Economic Opportunity Associations, Inc.
11. Grazing Associations
12. Irrigation, Drainage, and Soil Conservation Associations
13. Rural Renewal Projects
14. Resource Conservation and Development Projects
15. Multi-Family Housing Projects
16. Business and Industrial Insured Loan Projects
17. Sec. 601 Energy Impacted Area Site Development
18. Sec. 111 Area Development Assistance Planning Grants

F. Title VI, COMPLIANCE REQUIREMENTS

- (1) Nondiscrimination Agreement -- all applicants for group type loans and grants must sign Form FmHA 400-4 as a condition for receiving assistance.
- (2) Convenants (See FmHA 1901-E, Section 1901.202(e))
- (3) Public Dissemination of Title VI Information

FmHA group-type borrowers must meet the following requirements:

- A. Display nondiscrimination poster, "--And Justice For All"
- B. Handbooks, pamphlets, and other materials distributed to public describing the program or facility and requirements for participation must contain information on Title VI requirements.
- C. Publications and broadcasts should state that the program in question is an equal opportunity program or otherwise indicate that discrimination to the program is prohibited by federal law.

- D. Where a significant number or proportion of the population eligible to be served does not speak English, program information shall be written and published in a language other than English.

(4) Data and Information Collection

Recipients must maintain for review by FmHA and other appropriate agencies racial and national origin data showing the extent to which members of minority groups are beneficiaries of FmHA assisted programs.

- a. Examples of data requirements for MFH and CP borrowers
(All data kept should have race/ethnic and sex designations)

(i) Farmer Program Recipients:

(A) Grazing and Irrigation Associations and Resource Conservation and Development Organizations. Number of members in the association or organizations.

(B) Individual Farmer with Nonfarm Enterprises. Number of participant, as determined by the type of enterprise.

(ii) Housing program Recipients:

(A) Multifamily Housing Projects. Number of applicants as reflected by the waiting list, and number of tenants residing in the project.

(B) Technical Assistance and Self-Help Projects. Number of families participating in the Self-Help project. As determined by the race of the head-of-household.

Community Program Recipients.

(A) Water and Waste Disposal Projects. Number of users of the Water and Waste Disposal System, and a map of the service area with the minority user area denoted.

(B) Community Facility Projects: Participation data on the following projects will be maintained by the recipient:

(a) Health Care. Number of patients using the health care facility.

(b) Fire Rescue and Public Safety.

(1) Ambulances, Firetrucks, and Fire Stations: Log of individuals assisted, and a map of the service area with the minority areas denoted.

(c) Cultural and Educational.

(1) All schools. Number of students enrolled in the school.

(2) Libraries. Number of card holders or regular users of the library.

(3) Camp Grounds with Cabins. Number of campers during the year.

(4) Recreation Facilities. If membership to participate is required, the recipient will maintain records on the number of members. If no membership is required to participate, and project is open to all persons in the service area, then no information will be required.

(5) Other types of Cultural and Educational Projects. No information will be required, unless participants are screened and or a membership is required for participation.

(d) Energy Transmission and Distribution.

(1) All Projects. Number of users or customers of the facility.

(e) Public Buildings and Improvements.

(1) Home for Delinquents, Senior Citizen Retirement Homes and Fraternal Halls. Number of residents residing in the home or fraternal hall.

(2) Adult Day Care Centers, Food Preparation Centers, and Child Day Care Centers. Number of students or participants at the center.

(3) Other Types of Public Buildings and Improvements. No information will be required unless the participants are screened, or the recipient makes a determination on the eligibility of the participants.

(f) Other Community Facilities.

(1) Cemeteries. Number of grave plots sold.

(2) Scout Camps. Number of campers during the year.

(3) Other type Community Facilities. No information will be required.

(g) Watershed. No information will be required.

(h) Resource Conservation and Development Organizations.

Number of members in the organization.

(i) Recreation Associations. Number of members in the association.

F. PROCEDURES FOR ENFORCEMENT AND COMPLIANCE

Departmental and FmHA regulations require that compliance reviews be conducted on all loan and grant recipients for group-type assistance.

Type of compliance review required: 1. Pre-award reviews
2. Post award reviews

- a. Compliance Review - A compliance review is a systematic inspection designed to determine whether the loan or grant recipient is complying with Departmental and Agency rules and regulations implementing Title VI, and the Handicap Discrimination Act. Types of Compliance Reviews:

1. Pre-Award Review - This type of review is an inspection to determine that an applicant for FmHA assistance (group type) is in compliance with Title VI, and the Handicap Discrimination Act, Departmental and Agency regulations before loan approval, or before loan or grant funds are advanced.

2. Post-Award Review - This type of review is systematically and periodically done after FmHA assistance has been provided to the borrower or recipient. In other words, the loan or grant has been closed.

b. Compliance Review Officer - A person trained in civil rights and designated by the State Director to conduct compliance reviews on FmHA multi-family and community program loan and grant recipients. This is usually the District Director and/or a member of the District Director's staff. The State Director may designate other professional State staff to conduct compliance reviews.

Executive Order 12250 of November 2, 1980

Leadership and Coordination of Nondiscrimination Laws

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1-1. *Delegation of Function.*

1-101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1632), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-2. *Coordination of Nondiscrimination Provisions.*

1-201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1-202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions or laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1-203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1-204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1-205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1-206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1-207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1-3. Implementation by the Attorney General.

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations-as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1-4. Agency Implementation.

1-401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1-402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1-403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

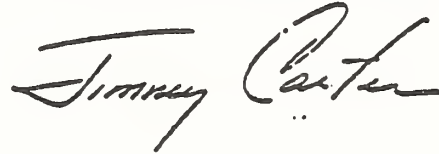
1-5. General Provisions.

1-501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (29 CFR 42.401 to 42.415).

1-502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1-503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1-504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

A handwritten signature in dark ink, appearing to read "Jimmy Carter". The signature is fluid and cursive, with a large, sweeping "J" and a long, horizontal tail stroke.

THE WHITE HOUSE,
November 2, 1980.

VI. COMPLIANCE REVIEWS



CLASS OUTLINE
COMPLIANCE REVIEWS

- I. INTRODUCTION AND OBJECTIVES

- II. INTERVIEWING TECHNIQUES
 - A. PREPARING FOR THE INTERVIEW
 - B. CONDUCTING THE INTERVIEW
 - C. CONCLUDE THE INTERVIEW

- III. HOW TO CONDUCT A COMPLIANCE REVIEW
 - A. PRE-AWARD REVIEW
 - B. POST-AWARD REVIEW
 - 1. PLANNING AND PREPARATION STAGE
 - 2. ACTUAL REVIEW STAGE
 - C. FINDINGS AND CONCLUSION STAGE
 - 1. DETERMINING NON-COMPLIANCE
 - D. WHAT TO DO WHEN NON-COMPLIANCE IS FOUND

- IV. ACTIVITIES
 - A. MULTIPLE CHOICE QUIZ
 - B. ROLE PLAYS
 - C. QUESTION AND ANSWER PERIOD

Class Notes

Compliance Reviews

I. INTRODUCTION

In this segment of the session, you will learn how to conduct a compliance review. Our objectives for this segment is for you to be able to effectively and confidently conduct a compliance review. Also, you will be able to determine compliance and noncompliance with Title VI, of the Civil Rights Act of 1964, and Section 504, the Handicap Discrimination Act.

I. INTERVIEWING TECHNIQUES

A. Introduction

The Compliance Review Officer will:

1. Interview association officials, members, and employees. In review of recipients of technical assistance grants, members of the self-help housing groups should be interviewed to determine the way in which they are recruited.
2. Interview informed local community leaders, including minority leaders, if any, to determine if the facility is operating without discrimination because of race, color, or national origin.

B. What is the Interview?

1. Definitions of Interview:

- a. A face-to-face meeting in which a person is asked about his or her views, activities, etc.
- b. A formal meeting in which a person or persons question, consult, or evaluate another or others.

2. Purpose of the Interview

"To gather facts, not opinion."

C. Preparing for the Interview

1. Determine who you plan to interview, and what information you think they can provide.

2. Obtain background information.

a. Ethnic make-up of community or area

b. Membership

(1) Names

(2) Ethnic characteristics

c. Officials--names of officers

d. Economic make-up of area

e. Services of the recipient

3. Provide Proper Environment.

a. Privacy

(1) Free of interruption

(2) Free of hostility (ex: office of country club manager or landlord, as appropriate; or county FmHA office)

(3) Conducive to the interviewee's freedom of expression

b. Arrange interview at the convenience of the interviewer.

D. Conducting The Interview

1. Identify yourself.

Be sure that interviewee knows that you represent the Federal Government, and that confidential statements and comments will be protected from unauthorized persons.

2. Establish Rapport.

Put the interviewee at ease usually by casual, neutral conversation.

3. Explain purpose of the interview.

a. Do not apologize for doing your job.

b. Do not go into too much detail, but channel interviewee's thoughts to first questions or items of needed information. Too much detail may cause interviewee to think too far ahead and miss important points or information.

4. Know yourself.

Be alert to the possibility of being affected by your prejudices.

5. Keep an open mind.

Do not make judgments until all the facts have been obtained.

6. Maintain a Plan.

a. Know the information wanted, and areas to probe in detail.

b. Be flexible and alert for additional, unanticipated information.

7. Move the Interview Along.

a. Let interviewee talk in his or her own way as long as the needed information is being provided.

(Remember: it's hard to gather information when you are talking.)

b. If interviewee gets off the track, gently bring the subject back for discussion.

c. Methods

1. Director or Directive

Questions or statements are worded to direct the course of the discussion.

2. Indirect or Permissive

a. Statement or words are chosen to permit or encourage the interviewee to move or talk along desired lines.

b. A key technique is to control the interview by following the lead of the interviewee.

This requires:

(1) Close attention to words; also sensitivity to their meaning, both apparent and obscure.

(2) Close attention to non-verbal action, especially facial expression and "body language."

d. Avoid leading questions.

Use questions that allow the interviewee to respond in a series of statements. Avoid questions that require "yes" and "no" responses.

Examples:

How do you feel about.....?

What is your reaction to?

Tell me something about.....?

In other words, the question should not suggest answers.

e. Avoid double questions.

Examples:

1. Is that a boy or a girl?

2. Have you ever been golfing or swimming at the country club?

3. Was it on 10th or 16th?

f. Handle transitions carefully.

Moving from one subject to another and maintaining continuity is an important technique.

1. to keep interview "flow"
2. to avoid areas of "conflict"

a. If you interview an uncooperative person:

1. Allow him/her to talk to vent feelings.
2. Don't argue.
3. Don't agree with his/her criticisms. Remain neutral.

E. Concluding the Interview Constructively

1. Summarize main points.
2. Get feedback.
Be sure you understand what was said.
3. Thank interviewee for corporation.
4. Advise interviewee of follow-up plans.

F. Characteristics Of A Good Interviewer

A good interviewer:

1. Is an active listener.
2. Has empathy.

Empathy helps one to listen with understanding.

3. Is a Critical analyst

- a. Constantly ask, can that statement mean anything other than what occurred to me?
- b. Sort out fact from opinion.
- c. Be perceptive.

Observe all aspects of interviewee behavior:

(1) Verbal

(2) Non-verbal

4. Has three basic role qualifications:

- a. Salesperson
- b. Psychologist
- c. Actor

G. Summary Tips

- 1. When dealing with people, there are no absolute answers; there are alternatives. Recognize this, and if one alternative does not work, try another.
- 2. The best advice for conducting a good interview are—"Observe Laws of Common Courtesy," and Be Yourself."

II. HOW TO CONDUCT A COMPLIANCE REVIEW

A. HOW TO CONDUCT A PRE-AWARD COMPLIANCE REVIEW

At the present time, "pre-award" reviews or initial reviews, are conducted on Water and Waste facility loans and other utility-type projects financed by FmHA. Under the provisions of the revised 1901-E, pre-award reviews will be conducted on all group type loans.

The pre-award review will not necessarily entail an on-site visit, but is necessary to assure compliance with Title VI and other requirements before the applicant receives the loan funds.

Basically the pre-award review will entail the following:

1. Gather and review population statistics by race, and calculate percentages of the race make-up of the population to be benefited by the facility.
2. Obtain and review copies of by laws, regulations, policies, tenant agreements, leases, and application forms. Determine if anything in these documents are discriminatory and contrary to the letter and spirit of Title VI.

3. Determine if the area has a population composed of a group (5 percent or more of the population) of non-English speaking or limited English speaking persons.
4. Look at planned advertisements, identify persons and public interest groups that have been contacted or planned to be contacted by the applicant. Determine if adequate notification of the facility's availability on an Equal Opportunity basis was given to the minority community.
5. Determine the race, national origin, and sex of each member of existing advisory board and employees.
6. Contact in person or by phone, any community leaders, including minority leaders to determine if they know about the proposed facility.
7. Compare this facility with similar facilities in the area. Is there a difference in how other facilities serve minorities compared to how this facility may plan to serve minorities.

B. HOW TO CONDUCT A POST AWARD REVIEW

1. Planning and Preparation Stage

a. Before the Compliance Review Officer is scheduled to go to the facility or project site, the following steps should be undertaken:

- (1) Notify the borrower/recipient of scheduled visit
(date can be specified or left open).
- (2) Collect and review population statistics by race and income for the area.
 - (A) Determine if possible, the eligible population to be benefited by the facility.
 - (B) Calculate percentages of race makeup of population, if not available.
- (3) Make a list of community contacts you plan to make during review.

- b. Review office files; review loan and assurance agreements, project summary, previous compliance reviews and any other available information on facility. If facility is a Multiple Family Housing Project, review the Affairmative Fair Housing Marketing Plan. What are the projections of people to be benefited by race - calculate percentages. For a community program project, what are the projections of people to be served by race. Calculate percentages.

C. Actual Review Stage

1. Visit facility site and interview the recipient or recipient's manager. Explain purpose of your review and visit. Ask pertinent questions to get narrative type responses.
2. Is "---And Justice for All" poster displayed? If not ask why? Observe the recipient's office records.
3. Membership or tenant records -

Are there race designations of participating users, members or tenants? Calculate the percentage by race or participant. NOTE: PROGRAM FACILITY SHOULD BENEFIT PEOPLE IN PROPORTION TO POPULATION OF THE SERVICE AREA.

4. For facilities that require applications for services or benefits. Is there a waiting list? Are there race designations of people waiting to be served? Are applicants to be served selected in the order (by date and time) that the application is received? If not, find out why.

5. Review the facility's operating regulation; if membership fees or dues are required, how are they handled?

Example: Are minorities required to pay higher fees for water or sewer service than nonminorities are required to pay?

In reviewing a community facility loan for a fire station, does the log kept at the station indicate that it takes longer to respond to calls in the minority community than in the nonminority community?

6. Interview employees, available organization officials, and members of facility. Members, tenants or users should be asked how were they made aware of the facility. Were references to participate required?

7. Determine if recipient advertises for members, tenants or users. Was advertising efforts made to attract minority participants or others who would least likely to apply for the services? What method of advertising was used?
8. Is there a significant segment of the population that speaks a language other than English? Does the lack of bilingual capability affect the facility, and the quality of service provided? Were leaflets, brochures and other types of advertising printed bilingually?

Note: FmHA personnel should inform borrowers/recipients who have facilities located in areas where there is a concentration of non-English speaking people, that material should be printed bilingually to inform all eligible population of the availability of memberships, rental units, or other services being offered by an FmHA financed facility.

9. Community Contacts are a Must!

These contacts must include minority leaders for areas with an existing minority population, or other citizens that might have a knowledge of the recipient's policy in regard to operating the facility without regard to race, color, or national origin. Do minorities know about the facility, and if they do, are they aware that the facility is government financed? Did they see any advertisements on the facility?

Is it known by most people interviewed that the facility is operating without discrimination based on race, color, or national origin (for MFH project, protected class includes sex, and religion).

Compliance review reports that do not contain evidence that community contacts were made, including interviews with leaders or other spokesmen in the community, during the review, will be determined unacceptable.

Every effort should be made to contact any minority leader or knowledgeable citizen while conducting the review.

D. Findings and Conclusion Stage

In drawing a conclusion that a facility is in compliance or noncompliance, there must be adequate documentation included with the compliance review form to substantiate conclusions and finds.

E. Determining Noncompliance with Title VI

Examples of noncompliance with Title VI when conducting a compliance review.

1. Evidence that indicates little or no minority participation in the project. Percentages of participants by race are out of proportion with racial percentages of the population in the area.

a. No outreach was done by the facility to attract the group of people who are underserved by the facility.

2. Indications that services or other benefits offered by the recipient is of different quality for minorities than services and benefits provided for nonminorities.

Example: The circumference of water pipes installed in the minority community is smaller than the pipes installed in the nonminority community.

3. No advertising. Availability of services are advertised through word of mouth. The "-- And Justice For All" poster is not posted.

a. If there was advertising, there is no indication that it reach the minority community; or the wording or pictures inferred that facility was for one special class of people.

- b. Advertising for RRH should indicate that units are available for handicapped individuals.
- 4. Recipient not keeping racial or ethnic data on members, tenants, users or other beneficiaries of the facility.
- 5. For facilities that require an application for participation, the participant is not keeping a waiting list by date and time, with the race/ethnic designation of applicants.
 - a. Vacancies for RRH units are not filled by the eligible applicants listed first on the waiting list. Recipient uses his/her judgment in filling vacancies.
 - b. Minority users of a water and waste facility may be hooked up to system after other users.
- 6. Emergency calls for minority community to fire stations receiving FmHA Community Facility loans may be responded to more slowly than to other communities, or ambulance services may take longer arriving to the minority community than to the nonminority community.

7. Community contact reveal that minorities are not aware that the facility is Federally financed and open to all regardless of race, color, or national origin.

F. What to Do When Non-Compliance With Title VI is Found

Compliance reviews, where any of the above indications of noncompliance are found, will be sent to the Director of Equal Opportunity in the National Office for handling.

DATE OF REVIEW	COMPLIANCE REVIEW (Nondiscrimination by Recipients of Financial Assistance through Farmers Home Administration)	STATE
		COUNTY
SOURCE OF FUNDS <input type="checkbox"/> Direct <input type="checkbox"/> Insured		CASE NUMBER
		DATE LOAN OR GRANT CLOSED

TYPE OF ASSISTANCE

<input type="checkbox"/> Water and Waste Disposal	<input type="checkbox"/> Applicant for Water and Waste Disposal Loan or Grant	<input type="checkbox"/> RRH and LH Organizations
<input type="checkbox"/> Nonprofit Assn.	<input type="checkbox"/> Grazing Association	<input type="checkbox"/> Public Bodies
<input type="checkbox"/> LO Coop	<input type="checkbox"/> Other (Identify) _____	<input type="checkbox"/> RHS

NAME OF BORROWER ORGANIZATION OR ASSOCIATION _____

ADDRESS OF BORROWER _____

I. PARTICIPANTS

(For the purpose of this report, the term "PARTICIPANTS" will be used to describe "USER," "MEMBERS," "OCCUPANTS," "SITE PURCHASER" or Potential Users for pre-loan closing compliance reviews, as applicable.)

A. Number of participants

Black	Hispanic	Asian or Pacific Islander	American Ind. or Alaskan Native	White	Other

B. Number of participants as of last review: _____ Date of last review: _____

Are all interested individuals permitted to file application (written or otherwise) for participation? ☐ YES ☐ NO

If "NO," explain why not: _____

D. Does or will recipient of financial assistance maintain adequate records on the receipt and disposition of applications, including a list of applicants wishing to become participants? ☐ YES ☐ NO

If "NO," what action is being taken to establish adequate records: _____

If "YES," number of applicants wishing to become participants on list _____

Number on list from minority group _____

E. Number of applications received from Prospective participants since last review: Total _____

*
If zero, skip to H.

From minority group applicants _____

F. Number of applications which have been withdrawn or rejected since last review: Total _____

From minority group applicants _____

Number of applications now pending on which no action has been taken: Total _____

From minority group applicants _____

II. USE OF SERVICES AND FACILITIES

A. Are all participants required to pay the same fees, assessments and charges per unit for the use of the facilities? ☐ YES ☐ NO

If "NO," explain: _____

B. Is the use of the services or the facilities restricted in any manner because of race, color, or national origin? ☐ YES ☐ NO

If "YES," explain: _____

Answer C and D for RRH, RHS and LH only:

C. What methods are used to inform the community of the services' availability of the use of the facility (newspaper, radio, tv, etc.)? _____

D. Do these methods reach the minority group population equally with the rest of the community? ☐ YES ☐ NO

Answer E for RRH and LH only:

E. Does the organization's Operating Rules provide for standard reasons for eviction? ☐ YES ☐ NO

If "YES," specify: _____

Are these reasons stipulated in the Lease Agreement? ☐ YES ☐ NO

If not, how are they made known to participants? _____

III. CONCLUSIONS

A. Did your review of the records maintained by the association or organization disclose any evidence of discrimination on the grounds of race, color, or national origin in the services or use of the facility? ☐ YES ☐ NO

If "YES," describe in detail such discrimination: _____

B. If you contacted community leaders, including informed minority leaders did the interviews disclose any evidence of discrimination as to race, color, or national origin in the services or use of the facility? ☐ YES ☐ NO

If "YES," describe in detail such discrimination: _____

List those contacted and identify those which are minority group. _____

C. Did your observation of this borrower's operations or proposed operations indicate any discrimination on the grounds of race, color, or national origin in the services or use of the facility? ☐ YES ☐ NO

If "Yes," describe in detail such discrimination: _____

D. Comments for other observations or conclusions: _____

Based upon my observation of this borrower's operation or proposed operation and the attitude of the Governing Body and Officials it is my opinion that the Recipient _____ Is _____ Is Not complying with the requirements under Title VI of the Civil Rights Act of 1964.

DOCUMENTATION - COMPLIANCE REVIEW

(1) Population of Service Area and Participants by Race/National Origin:

<u>Race/National Origin</u>	<u>Population</u> No. %	<u>Participants</u> No. %	<u>(People Served)</u> <u>or to be served)</u>
White			
Black			
Hispanic			
Asian or Pacific Islander			
Am. In. or			
Alaskan Native			
<u>Other</u>			
Total			

NOTE: Percentages of people served by race must be reasonably in proportion to the population percentage by race.

(A) Write a statement explaining reasons that the percentages of people served are not in proportion to the population percentages.

(2) Location of facility. State whether the location of the facility will have the effect of denying access to any persons because of race, color, or national origin.

(3) Number of Employees by Race/National Origin

<u>Race/National Origin</u>	<u>No.</u>	<u>%</u>
White		
Black		
Hispanic		
Asian or Pacific Islander		
Am. In. or Alaskan Native		
<u>Other</u>		
Total		

(B) List employees interviewed, and summarize their comments regarding the facility.

(4) Race/Ethnic Makeup of Advisory Board, Board of Directors or other similar governing board, if any.

<u>Race/National Origin</u>	<u>No.</u>	<u>%</u>
White		
Black		
Hispanic		
Asian or Pacific Islander		
Am. In. or Alaskan Native		
<u>Other</u>		
Total		

(A) For new projects describe the efforts of the borrower to attract minority and handicapped individuals to serve on the Advisory Board, Board of Directors or other similar governing board.

List board members interviewed, and summarize their comments regarding the facility.

(5) Dissemination of Information on the Facility

- (a) List methods used or to be used by the borrower to inform the community of the availability of services. State whether information disseminated contains a nondiscrimination clause, i.e., "Federal law prohibits discrimination in this program."

(Examples: advertising: news media, radio, TV or printed material such as pamphlets, signs, leaflets, etc.)

- (b) Attach copies of all available material to this Form.

(6) Community Contacts

- (a) List names of community leaders contacted, and indicate minority leaders contacted.
- (b) Write a statement on the minority community's knowledge of the facility's availability and a statement regarding the comments made by others in the community regarding how services are being rendered.

(7) Quality of Services

Write a statement on the quality of service rendered by the facility and compare the services rendered with similar facilities in the area.

(8) Compliance with Section 504 of the Rehabilitation Act

- A. Parking: are special spaces set aside for the handicapped?
- B. Is the facility accessible by wheelchairs?
- C. List any policies or practices that would limit any handicapped individual from participating in the program.
- D. For Rural Rental Housing projects, include the number of units reserved for the handicapped, and how many units are currently occupied by qualified handicapped individuals.
- E. For community facility projects (Hospitals and Health Care Facilities) describe the method the borrower uses to communicate with persons with impaired hearing.

(9) Law Suits

Attach copies of any law suits, that have been made against the facility that are based on race, color, national origin, handicap, and age.

(10) For Water and Waste Facilities Only

For Pre-award compliance reviews on new facilities and when subsequent loan and/or grants are approved to extend a water and waste facility, the District Director or State Office Engineer shall sign a statement similar to the following to assure that all segments of the population in the service area have had the opportunity to become a user of the water and or sewer service:

"I have reviewed the plans and specifications for the
(Name of Facility and Location), and have made an on-site
 inspection to determine that isolated minority areas or users
 who desire service and have not been or will not be denied
 service from the (Name of Facility). I also certify that
 equitable service on or before completion of the FmHA project
 will be provided all users served.

 Signature

- (A) A map of the service area should be available, with the minority community outlined, if possible, and kept by the borrower for review purposes.

Indicators of Noncompliance with Title VI:

1. Statistical data -- percentage of participants by race are out of proportion to percentage of racial population in the area.
2. No outreach, or very little outreach by the borrower, especially in the minority community.
3. Unequal quality of service -- Service to minorities inferior in quality when compared to non-minorities.
4. No advertising -- advertising is done through word of mouth or in ways that did not reach the minority community.
5. No records -- Records on participants or applicants are not being kept by race/ethnic group.
6. Community contacts -- No contacts made by the borrower, and community contacts made during compliance review revealed that minorities are not aware that the facility is federally financed.

VII. SEC. 504 (HANDICAP)

CLASS OUTLINE
SECTION 504 OF THE REHABILITATION ACT

(NONDISCRIMINATION ON THE BASIS OF HANDICAP)

- I. INTRODUCTION
- II. FMHA LOAN AND GRANT PROGRAMS THAT MUST COMPLY
- III. DEFINITION OF TERMS
- IV. PROHIBITED ACTS OF DISCRIMINATION
 - A. DETERMINING SITE OR LOCATION
 - (1) PROGRAMS LIMITED BY FEDERAL LAW
 - (2) COMMUNICATION
- V. ASSURANCES REQUIRED
 - A. ASSURANCE FORM
 - B. DURATION OF OBLIGATION
- COVENANTS
- VI. DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES
- VII. NOTICE OF NONDISCRIMINATION AND ACCESSIBILITY
- VIII. REMEDIAL ACTION, VOLUNTARY AND SELF EVALUATION
- IX. EFFECT OF STATE OR LOCAL LAW OR OTHER REQUIREMENTS, AND EFFECT OF EMPLOYMENT OPPORTUNITIES
- X. EFFECT OF COMPLIANCE WITH REGULATIONS OF OTHER FEDERAL AGENCY
- XI. EMPLOYMENT PRACTICES
 - A. REASONABLE ACCOMMODATION
- XII. EMPLOYMENT CRITERIA
- XIII. EMPLOYMENT INQUIRIES
- XIV. PROGRAM ACCESSIBILITY
 - A. EXISTING FACILITIES
 - B. SMALL PROVIDERS
 - C. APPLICATION FOR MODIFICATION
 - D. HISTORIC PRESERVATION PROGRAMS
 - E. TIME PERIOD
 - F. TRANSITION PLAN

CLASS OUTLINE CONT.

XV. NEW CONSTRUCTION

A. DESIGN AND CONSTRUCTION

XVI. OTHER PROGRAMS AND ACTIVITIES

A. AUXILIARY AIDS

B. HEALTH CARE FACILITIES

XVII. ACTIVITIES

A. CASE STUDIES

B. QUESTION ANSWER PERIOD

Class Notes (Handout)

"SECTION 504 OF THE REHABILITATION ACT"

(Nondiscrimination on the basis of Handicap)

I. The Act states the following:

"NO QUALIFIED HANDICAPPED PERSON SHALL, SOLEY ON THE BASIS OF HANDICAP, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY THAT RECEIVES FEDERAL FINANCIAL ASSISTANCE."

The Act prohibits discrimination in program delivery, in employment, and program accessibility. The Act was amended in 1978 to bring within its coverage direct assistance programs provided by Federal agencies. Essentially, the Act applies to all FmHA individual loan program, i.e. Single Family Housing, Farmer Program loans.

II. Definitions

A. Handicapped Person -- means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

- B. Physical or Mental Impairment -- Includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss, affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive, genitourinary, hemic and lymphatic; skin and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, mental illness, and specific learning disabilities.
- C. Major life activities -- includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- D. Has a record of such impairment -- means, has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
- E. Is regarded as having an impairment means --
- (1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation.

- (2) Has a physical or mental impairment that substantially limits major life activities only as result of the attitude of others toward such impairment.
- (3) Has none of the impairments defined above but is treated by a recipient as having such an impairment.

F. Qualified Handicapped person means --

- (1) With respect to employment, a handicapped person who with reasonable accommodation can perform the essential functions of the job in question. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the performance of the duties of the job in question.
- (2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

III. Discriminatory Actions Prohibited

- A. An FmHA borrower or recipient in providing any aid or benefit or service, may not on the basis of handicap, directly or through contractual or other arrangements do the following:

1. Deny a qualified handicapped person an opportunity to participate in an FmHA financed project.
2. Afford a qualified handicapped person an opportunity to participate in a benefit or service at an FmHA financed project that is not equal to that afforded others.
3. Provide a qualified handicapped person with a service or benefit that is not effective in affording an equal opportunity to gain the same result or same level of achievement in the most integrated setting as that provided others.
4. Provide a different or separate service to handicapped persons unless such action is necessary to provide services that are as effective as those provided to others.
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing services to beneficiaries or participants in the recipient's program.
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards.

7. Otherwise limit a qualified handicapped person in the enjoyment of any rights, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service.

B. Aids, benefits or services to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result or reach the same level of achievement in the most integrated setting appropriate.

C. Despite the existence of separate or different programs or activities provided in accordance with this regulation (7 C.F.R. 15 b), an FmHA borrower or recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

D. An FmHA borrower or recipient may not directly or through contractual or other arrangements, utilize criteria or methods of administration:

(1) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.

- (2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the FmHA financed program.
- (3) That perpetuate the discrimination of another FmHA borrower if both borrowers are subject to common administrative control or are agencies of the same State.

E. Site Location -- In determining site or location of a facility, an FmHA borrower may not make selections that have the effect of excluding handicapped persons or have the effect of defeating or substantially impairing the accomplishments of the objectives of the FmHA program.

- (1) Program Limited by Federal Law -- The provisions of this Act does not prohibit the exclusion of nonhandicapped persons from the benefits of a program limited by Federal status or Executive Order for handicapped persons. Likewise, the Act does not prohibit the executive exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons.

- (2) Communication -- FmHA borrowers shall take appropriate steps to ensure that communication with other applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

IV. ASSURANCE REQUIRED

- A. ASSURANCE -- Applicants for FmHA Assistance which is subject to Sec. 504, must submit an Assurance on a form that the program will be operated in compliance with the Act.

B. DURATION OF OBLIGATION --

- (1) Where real property is involved, or structure on the property, the Assurance will obligate the FmHA borrower or in the case of a subsequent transfer, the transferee, for the period the real property or structure are used for the purpose for which the loan or grant was extended.
- (2) Where the FmHA loan or grant is extended to provide personal property the assurance will obligate the borrower for the period during which ownership or possession of the property is maintained.

(3) In other cases, the assurance will obligate the borrower for the period during which the assistance is extended.

C. COVENANTS -- Instruments effecting or recording transfers of real property shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for the purpose the loan or grant was extended, or for another purpose involving the provision of similar services or benefits.

V. DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES.

- A. Designation of Responsible Employee -- An FmHA borrower that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this regulation.
- B. Adoption of Grievance Procedures -- An FmHA borrower that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this regulation.

- (1) The Secretary may require any FmHA borrower or recipient with fewer than 15 employees to designate a responsible employee and adopt grievance procedure when the Secretary finds a violation of this regulation or finds that complying with these administrative requirements will not significantly impair the ability of the borrower or recipient to provide benefits services.

VI. NOTICE OF NONDISCRIMINATION AND ACCESSIBLE SERVICES

- A. An FmHA borrower or recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the borrower or recipient, that it does not discriminate on the basis of handicap.

- (1) The notification shall state that the borrower or recipient does not discriminate in admission, or access to or treatment or employment in, its programs and activities.

(2) The borrower shall also identify the responsible employee, and identify the existence and location of accessible service, activities and facilities.

(3) Methods of initial and continuing notification may include, but are not limited to, the posting of notices, placement of notices in the borrower's publications, radio announcements, and the use of other visual and aural media.

B. If an FmHA borrower or recipient publishes or uses recruitment material or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall contain a proper nondiscrimination statement. (See Sec. VI A-1) This requirement can be met by including appropriate inserts in existing material and publications, or by revising and reprinting the materials and publications.

VII. REMEDIAL ACTION, VOLUNTARY ACTION AND SELF EVALUATION

A. REMEDIAL ACTION: When a borrower has discriminated against persons on the basis of handicap in violation of this Act, the borrower will take remedial action deemed necessary by the Secretary to overcome the effects of discrimination.

(1) Where another recipient exercises control over the recipient or FmHA borrower that has discriminated, both recipients may be required to take remedial action.

B. VOLUNTARY ACTION -- A borrower may take steps in addition to any action that is required by regulation to overcome the effects or conditions that resulted in limited participation in the borrower's program or activity by qualified handicapped persons.

C. SELF EVALUATION -- Within one year after the release of the Department's regulation on Sec. 504, the recipient shall with the assistance of interested persons, including handicapped persons, or organizations representing handicapped persons, do the following:

1. Evaluate current policy and practices.
2. Modify after the remedial consultation, any policies and practices that do not meet requirements of the regulations regarding this Act.
3. Take, after the consultation, remedial steps to eliminate the effects of any discrimination as a result of the regulations regarding this Act.

4. For three years following completion of the required evaluation, FmHA borrowers will maintain a file for public inspection containing the following:

- a. A list of interested persons consulted.
- b. A description of areas examined and any problem identified.
- c. A description of any modification made, and any remedial steps taken.

IX. EFFECT OF STATE OR LOCAL LAW OR OTHER REQUIREMENTS, AND EFFECT OF
EMPLOYMENT OPPORTUNITIES

- A. The obligation to comply with this regulation is not obviated or alleviated by the existence of any State or local law or other requirements that imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services.
- B. The obligation to comply with this regulation is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

X. EFFECT OF COMPLIANCE WITH REGULATIONS OF OTHER FEDERAL AGENCIES --

An FmHA borrower or recipient that has designated a responsible official, and established a grievance procedure, provided notice, completed self-evaluation in the course of complying with regulations issued by other Federal agencies that has also given assistance, will be in compliance with the provisions of this regulation if all requirements have been met.

XI. EMPLOYMENT PRACTICES -- Sec. 504 of this Act provides coverage for the employment practices of persons receiving FmHA loans and grants.

A. Discrimination Prohibited -- No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.

1. An FmHA borrower shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap does not occur. The borrower may not limit, segregate or classify applicants or employees in any way that adversely affects their opportunity or status because of handicap.

2. An FmHA borrower may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants to discrimination. This includes relationships with labor unions, with organizations providing or administering fringe benefits to employees of the borrower, and with organizations providing training and apprenticeship programs.
3. The provisions of the part of the regulations pertaining to employment, apply equally to volunteer service.

B. Specific Activities

- (1) Prohibited discrimination in employment applies to the following activities: (Examples)
 - a. Recruitment, advertising, and processing applications for employment.
 - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, etc.
 - c. Rates of pay or other forms of compensation.

B. Specific Activities (cont.)

d. Job assignments, job classifications, position descriptions.

e. Any other term, condition or privilege of employment.

(1) An FmHA borrower shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee.

XII. REASONABLE ACCOMMODATION.

A. An FmHA borrower or recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the borrower or recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

B. Reasonable accommodation may include:

1. Making facilities used by employees readily accessible to and useable by handicapped persons.

2. Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provisions of readers or interpreters.

C. To determine whether an accommodation would impose an undue hardship on the operation of a borrower's program, the following factors must be considered:

1. The overall size of the borrower's program with respect to number of employees, number and type of facilities and size of budget.
2. The type of operation, including the composition and structure of the recipient's workforce.
3. The nature and cost of the accommodation needed.

D. An FmHA borrower or recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

XIII. EMPLOYMENT CRITERIA

A. An FmHA borrower or recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons unless:

1. The test score or selection criterion as used by the borrower is job related.
2. It cannot be shown that alternative job-related tests or criteria are available that do not screen out or tend to screen out handicapped persons.

B. An FmHA borrower or recipient must ensure that when tests concerning employment are administered to an applicant or employee who has a handicap that impairs sensory, manual or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or other factor the test purports to measure.

XIV. PREEMPLOYMENT INQUIRIES

- A. An FmHA borrower or recipient may not conduct a preemployment medical examination or inquiry of an applicant, as to whether the applicant is a handicapped person or as to the nature or severity of a handicap.

A borrower may, however, make a preemployment inquiry into the applicant's ability to perform job-related functions.

- B. When an FmHA borrower is taking remedial action, voluntary action or affirmative action to overcome the effects of conditions that resulted in limited participation in the FmHA financed program, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped:

Provided,

1. The borrower states clearly on any written questionnaire or makes clear orally that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts.

2. The borrower states clearly that the information is being requested on a voluntary basis and will be kept confidential. The refusal of an applicant or borrower to provide this information will not subject the applicant or borrower to any adverse treatment.

C. Nothing in this regulation shall prohibit a borrower from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided:

1. All entering employees are subject to the same examination regardless of handicap.

2. The results of such examination are used only in accordance with this regulation.

D. Information obtained as to the medical condition or history of the applicant shall be collected and maintained on separate forms and accorded confidential treatment.

1. Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons, and regarding necessary accommodations.

2. First aid and safety personnel may be informed if the condition might require emergency treatment.
3. Government officials investigating compliance with the act shall be provided relevant information upon request.

XV. PROGRAM ACCESSIBILITY

"No qualified handicapped person shall, because a recipient's facilities are inaccessible to, or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity financed by the Federal Government."

XVI. EXISTING FACILITIES

A. Program Accessibility

FmHA borrowers will operate facilities and programs so that they are readily accessible to and useable by qualified handicapped persons.

The regulation regarding Section 504 does not require that every building or part of a building be accessible, but the program must be accessible.

B. Method

Program accessibility can be accomplished through such means as:

1. Redesigning of equipment
2. Reassignment of services to accessible buildings
3. Provisions of aides, home visits, delivery of services at alternate accessible site.
4. Alteration of existing facilities
5. Construction of new facilities.

Structural changes to existing facilities are not required where other methods are effective in providing program benefits and achieving compliance with the regulations.

A borrower must give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate to obtain full benefits of the program.

C. Small Providers

If an FmHA borrower with fewer than 15 employees finds that after consultation with a handicapped person seeking services, that there is no method of complying with the requirements of this regulation without making significant alteration in its existing facilities, the borrower may refer the handicapped person to other providers of those services that are accessible at no additional cost to handicapped persons.

D. Application for Modification

FmHA borrowers or recipients that determines after a self-evaluation, that program accessibility can only be accomplished through substantial modifications which would

result in a fundamental alteration in the nature of the program, may apply to the Secretary for a modification of the requirements.

E. Historic Preservation Programs

1. In the case of historic preservation programs, program accessibility means that a program is readily accessible to and useable by handicapped persons. However, an FmHA borrower will not be required to make each of its existing historic properties or every part of an historic property accessible to and useable by handicapped persons.

Methods of achieving program accessibility include:

- a. Making alterations which enable handicapped person to have access to otherwise inaccessible areas or features of the historic properties.

- b. Using audio-visual materials to depict otherwise inaccessible areas or feature of the historic properties.
 - c. Assigning persons to guide handicapped persons into or through inaccessible portions of the historic properties.
2. The Secretary may grant a waiver of the program accessibility requirement where accessibility cannot be achieved without causing a substantial impairment of significant historic features.

F. Time Period.

An FmHA borrower shall comply with the requirements of program accessibility within 60 days of the effective date of the USDA regulation (June 11, 1982). Where structural changes in the facilities are necessary, such changes shall be made within 3 years of the effective date.

G. Transition Plan

In the event that structural changes to facilities are necessary to meet the requirement for program accessibility, an FmHA borrower shall develop within 1 year of the USDA regulation effective date (June 11, 1982), a transition plan setting forth the steps necessary to complete such changes.

The plan will:

1. Identify physical obstacles in the borrower's facilities that limit accessibility of the program or activity.
2. Describe in detail the method that will be used to make the facilities accessible.
3. Specify the schedule for taking the steps necessary to achieve full program accessibility.

4. Identify the person responsible for implementation of the plan.

XVII. NEW CONSTRUCTION

A. Design and Construction

Facilities must be designed and constructed so as to be readily accessible and usable. (This requirement applies to all buildings for which site clearance has begun after June 3, 1977.

B. Alteration

Alteration that affect accessibility must, to the maximum extent feasible, be readily accessible and usable by handicapped persons.

C. American National Standards Institute Accessibility Standards

Facilities and alterations must generally comply with the American National (ANSI) specifications for "Making Building and Facilities Accessible to, and Usable by, the Physically Handicapped "(ANSI A117.1-1980) published by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018".

D. Compliance with the Architectural Barriers Act.

FmHA borrowers whose facilities are covered by the Architectural Barriers Act of 1968 as amended, are not relieved of this responsibility to comply with the requirements and any implementing regulations of that Act.

XVIII. OTHER PROGRAMS AND ACTIVITIES

A. Auxiliary Aids

1. An FmHA borrower that employs 15 or more persons, shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills.
2. The Secretary may require an FmHA borrower that has fewer than 15 employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the borrower to provide its benefits or services.
3. Auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

B. Health Care Facilities.

1. Communications. FmHA borrowers having health care facilities that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment, shall take steps to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills are not denied effective notice because of their handicap.

2. Emergency Treatment for the Hearing Impaired.

An FmHA financed hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

3. Drug and Alcohol Addicts. An FmHA borrower that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

C. Multifamily Rental Housing.

1. New Construction. FmHA borrowers receiving assistance for multifamily rental housing projects constructed after June 11, 1982, shall construct at least five (5) percent of the units in the project, or one unit, whichever is greater to be accessible to or adaptable for physically handicapped persons.

This requirement may be modified if a borrower shows through a market survey that a different percentage of accessible or adaptable units is appropriate for a particular project or service area.

- a. The variety of units accessible or adaptable shall be comparable to the variety of units available in the project as a whole.
- b. No extra charge may be made for use of accessible or adaptable units.

c. An FmHA borrower that has rental housing projects on more than one site may not locate all accessible or adaptable units at one site, unless only one accessible or adaptable unit is required.

d. Standards for accessibility must comply with the American National Standards Insititute (ANSI).

2. Existing Facilities. An FmHA borrower receiving assistance for multi-family rental housing projects constructed prior to June 11, 1982, shall assure that their facilities comply with the program accessibility requirements if a qualified handicapped person applies for admission.

a. Necessary physical alterations shall be completed within a reasonable amount of time after the unit becomes available for occupancy by the qualified handicapped person.

b. FmHA may assist recipients to comply with program accessibility requirements through methods such as:

- (1) consideration of subsequent loan applications for the purpose of making existing facilities accessible, or for construction of additional units which are accessible.
- (2) consideration of approval to commit project reserve account funds for minor modifications in order to make existing facilities accessible.

Friday
June 11, 1982

Part III

**Department of
Agriculture**

Office of the Secretary

**Nondiscrimination—Direct USDA
Programs and Activities; and
Nondiscrimination on the Basis of
Handicap Programs and Activities
Receiving or Benefiting From Federal
Financial Assistance**

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15

Nondiscrimination; Direct USDA Programs and Activities

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This rule prohibits agencies, officers, and employees of the Department of Agriculture from discriminating on the basis of handicap against qualified handicapped persons in any program or activity administered by the Department. Such discrimination is prohibited by Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978. The effect of this action will be to alert agencies, officers, and employees of the Department to the prohibitions of Section 504 of the Rehabilitation Act of 1973, as amended, until the Department develops more detailed regulations.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT:

William C. Payne, Jr., Policy and Operations Division, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: 202-382-1130 (voice and TTY—

telecommunications device). Copies of this rule are available in Braille and on tape and will be provided upon request.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended, by the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, (29 U.S.C. 794) provides that: "No otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." Accordingly, this rule will add "handicap" to the current prohibitions against discrimination on the bases of race, color, religion, sex, age and national origin in programs and activities conducted by the Department.

Since no legal requirements are established beyond those contained in Section 504 itself, the Department, pursuant to 5 U.S.C. 553, for good cause finds that general notice of proposed rulemaking and public procedure thereon are unnecessary. The Secretary

has determined that this regulation is not a major rule as defined by Executive Order 12291. According to that order, a major rule is one that is likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department does not believe that this regulation will have any of these consequences. Its conclusion is based upon the fact that the regulation establishes no new legal requirements. As a result, it is not necessary to prepare a Regulatory Impact Analysis.

Furthermore, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulation impacts on direct USDA programs only. Therefore, no Regulatory Flexibility Analysis is required.

Pending the issuance of Government-wide guidelines by the Department of Justice, the Department of Agriculture will develop more detailed regulations implementing Section 504 as it pertains to programs it conducts.

A final regulation similar to this regulation but pertaining to federally assisted programs, is being published simultaneously with this regulation.

List of Subjects in 7 CFR Part 15

Administrative practice and procedure, Civil rights, Government contracts, Grant programs—Agriculture, Loan programs—Agriculture.

For the reasons given above, Title 7, Part 15, Subpart B of the Code of Federal Regulations is amended as follows:

PART 15—NONDISCRIMINATION

1. The authority citation is revised to read as follows:

Authority: 78 Stat. 252; 80 Stat. 379; 87 Stat. 394, as amended by 92 Stat. 2955; 42 U.S.C. 2000d-1; 5 U.S.C. 301, 29 U.S.C. 794.

2. Section 15.51 is revised to read as follows:

§ 15.51 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture, shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, handicap, or

national origin under any program or activity administered by such agency, officer, or employee.

(b) No agency, officer, or employee of the Department shall on the ground of race, color, religion, sex, handicap, age, or national origin deny to any person in the United States: (1) Equal access to buildings, facilities, structures, or lands under the control of any agency in this Department, equal opportunity for employment, for participation in meetings, demonstrations, training activities or programs, fairs, awards, field days, encampments, for receipt of information disseminated by publication, news, radio, and other media, for obtaining contracts, grants, loans, or other financial assistance or for selection to assist in the administration of programs or activities of this Department.

Dated: June 3, 1982.

John R. Block,
Secretary.

[FR Doc. 82-15802 Filed 6-10-82; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 15b

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This rule prohibits entities which operate programs assisted by this Department from discriminating against qualified handicapped persons on the basis of handicap. The rule is necessary to implement section 504 of the Rehabilitation Act of 1973, as amended, and Executive Order 12250 of November 2, 1980, Leadership and Coordination of Nondiscrimination Laws. The effect of this action will be to define and forbid acts of discrimination in the operation of programs and activities and to specify certain administrative requirements to reduce the possibilities for discrimination.

The public is advised that the general government guidelines published in 1978 by the then Department of Health, Education and Welfare are now under review by the Department of Justice. Should the Department of Justice determine that the general government guidelines should be revised, the Department of Agriculture will revise its Section 504 regulations accordingly. In light of the possibility that the 504

regulations published here may be subject to such a revision, the Department will receive public comments on possible changes and on the economic impact of these regulations. This announcement does not commit the Department in any way to change its regulations.

DATES: Effective Date: July 12, 1982.

Comments should be received by August 10, 1982.

ADDRESS: Comments should be directed to Isidoro Rodriguez, Acting Director, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William C. Payne, Jr., Policy and Operations Division, Office of Minority Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. Phone: 202-382-1130 (voice and TDD—telecommunications device). Copies of this rule are available in Braille and on tape and will be provided upon request. Though not required by Executive Order 12291, a Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is also available upon request from the above named individual.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation, § 15b.8(c), have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0505-003.

Background

Section 504 of the Rehabilitation Act of 1973, as amended, provides that: "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." These regulations implement Section 504 as it pertains to federally assisted programs and activities, that is, where Federal assistance flows from the Department through an intermediary called a recipient. Regulations to implement section 504 as it pertains to federally conducted programs will be considered in the future.

On April 28, 1976, Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally

Assisted Programs," was issued. This Executive Order assigned to the Department of Health, Education, and Welfare (HEW) the responsibility for coordinating the implementation of section 504 for federally assisted programs. HEW published "Implementation of Executive Order 11914" (45 CFR 85.1-85.99), guidelines for Federal agencies, on January 13, 1978. The regulations established Federal agency responsibilities, standards for determining who are handicapped persons, and guidelines for determining discriminatory practices in employment and program services.

The HEW guidelines recognized that because of the diversity of types of handicaps and the variety of settings in which federally assisted programs are offered, the prohibition of discrimination would not itself be sufficient to ensure handicapped persons an equal opportunity to enjoy benefits. For example, admission of a hearing-impaired person to an educational program would be meaningless unless adequate visual materials or an interpreter were also provided. Accordingly, the guidelines specified that recipients be required to make special accommodations for handicapped persons where necessary and even to provide special programs if that is the only way in which an equal opportunity to participate in the federally assisted program can be assured. At the same time, the guidelines took into consideration the financial and human burdens entailed in making federally assisted programs accessible to handicapped persons and made allowances to minimize hardship.

In developing proposed regulations to implement section 504, the Department of Agriculture followed the HEW guidelines and that Department's own section 504 regulations which were later adopted by the Department of Health and Human Services (45 CFR 84.1-84.99) and by the Department of Education (34 CFR 84.1-84.99). The Department of Agriculture's proposed section 504 regulations were published on January 29, 1979 (44 FR 4620) and widely distributed among organizations representing handicapped persons, Federal agencies, and entities administering programs assisted by the Department. A thorough discussion of the public comment received is contained below in Explanation of Revisions and Response to Comments.

On November 2, 1980, Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, transferred coordination authority for the implementation of section 504 in regard to federally assisted programs

from the Department of Health and Human Services, which had succeeded the Department of Health, Education and Welfare, to the Department of Justice. On August 4, 1981, at 46 FR 49686, the Department of Justice redesignated the HEW Guidelines of January 13, 1978, entitled "Implementation of Executive Order 11914," as Department of Justice Guidelines. The guideline will be recodified at 28 CFR Part 41.

In compliance with Executive Order 12250 and "Implementation of Executive Order 11914" these regulations have been reviewed and approved by the Department of Justice, the Equal Employment Opportunity Commission, and the Architectural and Transportation Barriers Compliance Board.

On June 19, 1981, the District Court in *Paralyzed Veterans of America v. Smith* (No. 79-1979 C.D. Cal.), granted a preliminary injunction ordering Federal agencies to publish final regulations on an expedited basis implementing section 504. This rule is being published pursuant to the Court order.

Classification

The Secretary has determined that this regulation is not a major rule as defined by Executive Order 12291. According to that order, a major rule is one that is likely to result in: An annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department does not believe that its section 504 regulations will have any of these consequences. Its conclusion is based upon cost estimates for recipients implementing the regulation, the various elements of flexibility that have been incorporated into the regulation to minimize cost, and estimated benefits for handicapped persons and society that will result. Each of these considerations cut across all of the factors involved in determining whether or not a regulation is a "major rule"

Regulatory Flexibility Analysis

The Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities because of allowances in the regulations for

recipients to adopt the least costly methods of achieving compliance where existing facilities are inaccessible or to obtain modifications of requirements for existing facilities if compliance would result in the impairment of significant features of historic properties. In addition, employers are only required to make accommodations for qualified handicapped persons if those accommodations do not cause an undue economic hardship on the operation of the assisted program. Certain administrative requirements are also waived for recipients employing fewer than fifteen persons.

Overview of the Regulations

The regulations are divided into seven parts. Subpart A, General Provisions, establishes basic definitions, concepts of nondiscrimination, and administrative requirements. Key definitions are those for recipient, Federal financial assistance, and qualified handicapped persons. The subpart generally prohibits recipients from discriminating against qualified handicapped persons solely on the basis of handicap through exclusion from program participation, denial of benefits, or other discriminatory actions. Administrative requirements include an assurance of nondiscrimination, designation of an employee responsible to coordinate compliance with the regulations, adoption of a grievance procedure, notification of interested persons that the recipient does not discriminate on the basis of handicap and that its program is accessible, and a self-evaluation of the program by the recipient. The subpart also specifies when remedial actions can be required and when they can be adopted voluntarily. Finally, Subpart A advises recipients that administrative requirements, adequately completed in compliance with regulations of other Federal agencies or State agencies, will satisfy this regulation.

Subpart B, Employment Practices, develops the basic concept of nondiscrimination in terms of employment by the recipient. All terms, conditions and privileges of employment are covered. In particular, recipients are prohibited from making preemployment inquiries as to whether an applicant is a handicapped person or the nature or severity of a handicap except in certain limited situations and then only in compliance with the regulations. Beyond the prohibition of discriminatory practices, the subpart requires recipients to make reasonable accommodations to the known physical or mental limitations of otherwise qualified handicapped applicants or employees.

Accommodations that are unreasonable, that is, that impose an undue hardship on the operation of the program, are not required. Factors to be considered in determining the reasonableness of accommodations are listed.

Subpart C, Program Accessibility, describes what is meant by nondiscrimination in regard to the accessibility of facilities. Two standards are set, one for existing facilities and one for new construction and alterations. Where existing facilities are inaccessible, recipients can make the assisted program accessible through such means as the relocation of services to accessible facilities, the provision of aides, or home visits. Only when nonstructural alternatives are inadequate to provide handicapped persons with an equal and effective opportunity to participate in the program are structural alterations or new construction required. In this case, a transition plan must be prepared describing the steps necessary to complete the structural changes in the three-year period allowed for such changes. All new construction and alterations must be designed and constructed to be accessible.

Subpart D, Preschool, Elementary, Secondary, Adult, and Extension Education, specifies the meaning of program accessibility for these programs. Public elementary and secondary programs must identify handicapped persons entitled to services and provide them with a free appropriate public education. Recipients operating public elementary and secondary education programs must also meet certain technical standards and procedural safeguards in the evaluation, placement, and reevaluation of handicapped persons who need or are believed to need special education or related services. Recipients operating private elementary and secondary education programs must provide qualified handicapped persons with an appropriate education in an integrated setting for both academic and nonacademic activities. Private school recipients are not held, however, to the same technical and procedural requirements for special education programs as public school recipients and may charge a handicapped person more than a nonhandicapped person if the provision of services to a handicapped person results in substantial cost increases. Both public and private education programs are prohibited from discriminating in the operation of food service programs and are specifically directed to provide special meals at no extra charge to

students whose handicap restricts their diet. Recipients operating extensive education programs must make their services, including camping activities and program materials, accessible to handicapped persons.

Subpart E, Postsecondary Education, prohibits recipients operating postsecondary education programs, including vocational education programs, from discriminating on the basis of handicap in admissions and recruitment and in the provision of academic and nonacademic services. Included in the latter are housing, financial aid and employment assistance.

Subpart F, Other Programs and Activities, prohibits discrimination in programs and activities not covered by subparts D and E. Recipients are required to provide effective notice concerning benefits, waivers of rights, or consent to treatment to persons with impaired sensory or speaking skills. In particular, recipients operating hospital programs must establish a procedure for providing emergency treatment for the hearing-impaired and may not discriminate in the admission or treatment of drug or alcohol abusers.

A new section on multi-family rental housing requires that five percent or at least one of the units in new rental housing projects must be accessible or adaptable to physically handicapped persons. To allow for local market conditions, some flexibility is permitted in the number of accessible or adaptable units required above one.

Subpart G stipulates that the same procedural provisions applicable to the enforcement of Title VI of the Civil Rights Act of 1964 will apply to the regulations implementing Section 504 of the Rehabilitation Act of 1973. These procedures provide for monitoring of compliance records, complaint processing, hearings, termination of assistance, and enforcement by any other means authorized by law.

Explanation of Revisions and Responses to Comments

The Department of Agriculture's final regulations implementing section 504 of the Rehabilitation Act of 1973 have been patterned after the section 504 regulations of the Department of Health and Human Services (HHS) (42 FR 22675 (1977), 45 CFR 84.1-84.99 (1979)) and the Department of Education (ED) (45 FR 30602 (1980), 34 CFR 84.1-84.99 (1980)). The Department adopted this approach in order to simplify compliance for its many recipients who are also affected by the HHS or ED regulations. Since analyses of each section of the HHS and

ED section 504 regulations were published with those regulations, this section is intended to supplement rather than repeat those analyses. Other general interpretive material can be found in the guidelines, "Implementation of Executive Order 11914," (43 FR 1231 (1978), 45 CFR 85.1-85.89), originally published by the Department of Health, Education and Welfare and subsequently adopted by the Department of Justice according to Executive Order 12250 (45 FR 72995 (1980)). The Department of Health and Human Services' published Policy Determinations (43 FR 18629 (1978) and 43 FR 36033 (1978)) address specific issues.

The final regulations have also been patterned after the Department's regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (relating to race, color and national origin), and Title IX of the Education Amendments of 1972, as amended, 42 U.S.C. 1683 (relating to sex), except where the legislative history of section 504 or government policy has required a different approach. The Department's Title VI regulations appear at 7 CFR 15.1-15.12 and 15.66-15.124 (1980), and the Title IX regulations appear at 7 CFR 15a.1-15a.71 (1980).

The Department received 74 letters of official comment on the proposed regulations containing approximately 250 recommendations. Most of these comments were from recipients or organizations representing recipients and from agencies within the Department.

Nearly every section of the regulations received some comment. In general commenters approved of the regulations and their similarity to the HHS and ED section 504 regulations. One frequent recommendation was that the regulations should be tailored more specifically to this Department's programs. As a result, several agencies of the Department were involved in preparing new language pertaining to specific program areas.

Other concerns of commenters were the potential costs of making existing facilities accessible, the meaning of requirements for auxiliary aids, and the administrative burdens involved in compliance. The Department has attempted to respond to these concerns either by modifying the proposed regulations or by explaining the regulatory requirements.

Several editorial changes have been made to the text of the proposed regulations in the interest of clarity. These changes are minor and will not be discussed below.

Subpart A—General Provisions

Section 15b.1 Purpose.

This section has been rewritten to conform to the language of section 504 of the Rehabilitation Act of 1973.

Several commenters suggested that the regulations be revised to implement the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978). The regulations have been revised to incorporate those sections of the 1978 amendments which affect Federally assisted programs and activities. Consequently, the phrase, "as amended," has been added to this section.

We note that the 1978 amendments include a provision prohibiting Executive agencies from discriminating against qualified handicapped individuals in programs which those agencies operate themselves. While these regulations express the Department's general policies in regard to programs and activities which it directly administers, the regulations are not strictly applicable to such programs and activities. The Department is considering what additional regulations may be necessary to carry out this provision of the 1978 amendments.

Section 15b.2 Applicability.

In response to a comment and because of the Department's desire to clarify the applicability of these regulations, this section has been rewritten to conform the language in this section to the language in section 504, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and the Department's Title VI regulations.

This section has also been modified by adding language to clarify the applicability of the specific subparts.

Section 15b.3 Definitions.

Section 15b.3(a) The Act.

The definition of "Executive Order" has been deleted because Executive Order 11914 is not referred to in the body of the regulations.

Reference to the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978), has been added to the definition of "the Act" as recommended in several comments, and because these regulations have been revised to incorporate those sections of the 1978 amendments which affect Federally assisted programs and activities.

Section 15b.3(f) (formerly, § 15b.3(g) Recipient.

One commenter asked that the extent of coverage for States and their political subdivisions be clarified. Another suggested that definitions for primary recipient, sub-recipient, and beneficiary be added. The Department recognizes that questions as to the meaning of the term, "recipient," may arise in specific situations, especially in programs which refer to ultimate beneficiaries as recipients. However, the Department feels that these questions can best be resolved through program guidelines and case by case interpretations rather than by expanding the definition of "recipient." For purposes of these regulations, "recipient" will have the same meaning as it has in the Department's Title VI regulations.

Section 15b.3(g) (formerly, § 15b.3(i)) Federal financial assistance.

Two commenters pointed out that certain types of assistance, special use permits and food commodities in particular, were not clearly included in the definition of Federal financial assistance. The Department considers special use permits issued for less than fair market value, for reduced consideration or in recognition of the public nature of the assisted recipient program or activity to be Federal financial assistance and has added the phrase, "use (on other than a casual or transient basis) of Federal property for less than fair market value, for reduced consideration, or in recognition of the public nature of the recipient's program or activity," to the list of covered real and personal property (§ 15b.3(g)(3)(i)), in order to clarify the Department's interpretation of Federal financial assistance and to conform the definition to that which appears in the Department's Title VI and Title IX regulations. The phrase, "any other thing of value," has been added to cover food commodities as well as other forms of assistance not specifically included in the proposed definition of "Federal financial assistance."

One commenter requested that definitions of indirect and direct assistance be added to the regulations. The Department does not feel that this is necessary since the regulations will apply to the same recipients as have been covered by our Title VI regulations for indirect assistance. Several comments questioned whether contracts of insurance or guarantee should be excluded from the definition. The Department has retained the exclusion as it is consistent with the legislative

history of Section 504 and government policy. The interpretation of "contracts of insurance or guarantee" will be the same as used under Title VI. As recommended by one commenter, formula allocations have been added to the list of covered arrangements between recipients and the Department.

Section 15b.3(g) Applicant for assistance.

The definition of "applicant for assistance" has been deleted since the term is self-explanatory.

Section 15b.3(i) (formerly, § 15b.3(k)) Handicapped person.

Several commenters raised questions about the manner in which handicapped persons were to be identified. Section 504 and these regulations do not require that recipients identify which of their beneficiaries or employees are handicapped. Rather, recipients are to provide equitable services and employment opportunities to all qualified persons. Where handicapped persons have requested special programs or employment accommodations, recipients may, in certain cases, require medical certification that such accommodations are necessary because of a physical or mental impairment. However, there is no general requirement that physical or mental impairments be medically certified in order for a person to qualify as handicapped. In fact, it is not even necessary for a "handicapped person" to have a physical or mental impairment as long as a recipient regards that person as having such an impairment.

Section 15b.3(j) (formerly, § 15b.3(k)(i)(B)) Physical or mental impairment.

Positive comments were received on the partial list of diseases and impairments in § 15b.3(j)(2) which constitute physical and mental impairments.

Section 15b.3(k) (formerly, § 15b.3(j)(2)(ii)) Major life activities.

One commenter recommended that the definition of major life activities be modified to reflect the definitions used in the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. The Department considers the two definitions to be compatible and has therefore not amended the regulations.

Section 15b.3(n) (formerly, § 15b.3(l)) Qualified handicapped person.

The Department regards the terms, "otherwise qualified handicapped person" and "qualified handicapped

person," to be synonymous. Like HHS and ED this Department means by these terms handicapped persons who are qualified in spite of their handicap (45 CFR Part 84, App. A (1979) at p. 405). The definition is consistent with *Southeastern Community College v. Davis*, 442 U.S. 397, 406-407 (1979).

No change has been made to the basic definition of qualified handicapped persons with respect to employment. Even though the definition refers to handicapped persons who, with reasonable accommodation, can perform the essential functions of the job in question, the definition does not exclude handicapped persons who do not need any accommodation. The requirement that handicapped persons be able to perform essential job functions has been retained to conform to DOJ guidelines. In judging whether essential job functions can be performed, recipients may hold handicapped applicants to the same standards of education, training, and experience as are applied to nonhandicapped applicants.

Further guidance on the qualifications of alcoholics and drug addicts has been added to this section in accordance with the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. This language means that alcoholism and drug addiction, in themselves, cannot be used to disqualify persons for employment. However, inability to fulfill the duties of the job or endangering property or the safety of others, due to current alcohol or drug abuse, are legally disqualifying factors.

The definition of qualified handicapped person for purposes of postsecondary and vocational education has been modified by specifying that a handicapped person must meet "all" rather than "the" academic and technical standards requisite to admission or participation in the recipient's education program or activity. This was done to clarify the Department's intention to respect *bona fide* academic and technical standards of postsecondary and vocational education programs.

With regard to other services, including extension education, recipients that are not now serving qualified handicapped persons because of the inaccessibility of their program must take steps to provide effective services to handicapped persons meeting valid requirements for program participation. Physical and mental abilities may be valid requirements for participation in certain types of programs and activities, as in the case of camps providing a wilderness

experience, or private school offering only a college preparatory program.

Section 15b.4 Discrimination prohibited.

Most commenters approved of the language in this section or suggested that it be strengthened. A few requested clarifications or pointed out perceived hardships as a result of requirements for site selections, communications, and the extent of covered benefits. This section is the heart of the Department's Section 504 regulations and as such describes prohibited actions in general terms. Thus, while health and life insurance benefits are not specifically named, they and other similar arrangements of recipients can be inferred from the language of §§ 15b.4(b)(1) and 15b.4(b)(4). Applications of the general prohibitions of this section to particular situations will be found in the remaining subparts of this regulation and in pertinent program guidelines.

Section 15b.5 Assurances required.

A few commenters expressed concern that unnecessary paperwork would be required by this section. The Department does not wish to impose unreasonable administrative burdens on recipients and therefore plans to consolidate all civil rights assurances, to incorporate these into standard forms, and to accept existing assurances whenever possible.

Section 15b.6 (formerly, § 15b.7) Designation of responsible employee and adoption of grievance procedures.

Section 15b.6(b) entitled "adoption of grievance procedures," has been revised slightly to conform to the comparable HHS and ED regulations.

The omission in the proposed regulation was inadvertent. A specific grievance procedure has not been provided to allow recipients the flexibility to develop a procedure appropriate to their programs. Grievance procedures required by other regulations will be acceptable as long as they comply with due process standards and provide for the prompt and equitable resolution of complaints.

Despite a comment that all recipients should be required to name a responsible employee and to adopt grievance procedures, the Department has retained the fifteen or more employees limitation as more reasonable. This section does not require that an additional employee be hired to coordinate compliance. Recipients may select a person who has other civil rights duties, the responsible person named in compliance with

another agency's Section 504 regulations, or any other person.

A new § 15b.6(c) (formerly, § 15b.9) has been added to make clear that the Secretary can require recipients having fewer than 15 employees to designate a responsible employee and adopt grievance procedures if the recipient has been found in noncompliance with these regulations or if the imposition of these administrative requirements will not impair the ability of the recipient to provide benefits or services.

Section 15b.7 Notice of nondiscrimination and accessible services.

This section has been renamed, "Notice of nondiscrimination and accessible services," to reflect the additional requirement that recipients inform interested persons of the existence and location of accessible services, activities, and facilities. This new requirement was previously expressed in § 15b.18(g). It is included here to simplify compliance by recipients.

Most commenters supported the requirement that all recipients give notice of nondiscrimination on the basis of handicap. The Department has adopted this policy, as opposed to the policy expressed in the HHS and ED section 504 regulations requiring only recipients employing 15 or more persons to give such notice, because it is more appropriate to our programs and recipients. Unlike the recipients affected by the HHS regulations, many of our recipients employ fewer than 15 persons. An exemption from notice requirements for such recipients could have a serious impact on the delivery of assisted services to handicapped persons. Since the regulation requires only that appropriate initial and continuing notification be made, without specifying the steps or forms of the notice, and since the nature of the recipient and the assisted program will be taken into account in evaluating compliance, the Department believes that even very small recipients can meet this requirement without impairing their ability to provide benefits and services.

In response to one comment, an example of nonprint communications media has been added to the list of acceptable methods. Another commenter suggested that appropriate notice be provided to persons with mental retardation, learning disability, or any other disability which may interfere with the communications process. While the Department recognizes the importance of reaching such persons, this suggestion has not been adopted because of the difficulty of

enforcement. In all cases, recipients are encouraged to coordinate their notice with other civil rights requirements.

Section 15b.8 (formerly, § 15b.6) Remedial action, voluntary action, and self-evaluation.

Many comments were submitted in regard to this section. As a result of one comment, § 15b.8(a)(3)(iii) has been added to permit the Secretary, where necessary to overcome the effects of discrimination in violation of section 504 or this part, to require remedial action on behalf of handicapped persons presently in the program but not receiving full benefits or equal and integrated treatment. Other comments on remedial actions questioned their necessity, legality, appropriateness without a review process, and their retroactive application. The Department believes that remedial action is an appropriate tool to overcome the effects of discrimination in violation of section 504 or this part. However, the Secretary may order remedial action only for violations which occur after the effective dates of section 504 and these implementing regulations. The enforcement procedures contained in Subpart G provide an adequate opportunity for a hearing.

The largest number of comments concerned the requirement for self-evaluation, its meaningfulness for small recipients, the implications of allowing flexibility in the process, the importance of involving handicapped persons, and the impact of requiring all recipients to maintain their self-evaluation for three years. No changes have been made to this subsection because the Department is convinced that the self-evaluation is a useful activity for all recipients. The requirement that all recipients retain their self-evaluation records for three years deviates from the HHS regulations which apply such a requirement only to recipients employing 15 or more persons. While a number of commenters objected to this record-keeping requirement, the Department remains convinced that the retention of the self-evaluation records does not, in itself, create an unreasonable burden that would interfere with the assisted programs of small recipients.

The actual content of the self-evaluation will vary considerably depending on the size and nature of the recipient and assisted program. Even the smallest recipients, however, will necessarily generate some written material as they solicit the advice of handicapped persons or organizations representing handicapped persons, review their policies and practices, make necessary modifications to their

policies and practices, and take appropriate remedial steps. More specific details on the elements of the self-evaluation have not been incorporated in order to allow the flexibility necessary for implementation by the wide range of recipients assisted by this Department. The involvement of handicapped persons in evaluating the accessibility of assisted programs and activities to qualified handicapped persons will greatly assist recipients in identifying the most effective and economical modifications to their programs. Where a recipient's program has been included in the self-evaluation of the programs of a parent institution or primary recipient, the self-evaluation requirement is met if all aspects of the recipient's program have been adequately evaluated and appropriate modifications and remedial steps have been implemented.

Section 15b.10 Effect of compliance with regulations of other Federal agencies.

The requirement for coordination with sections 502 and 503 of the Act has been deleted since it was directed toward Federal agencies and not recipients. In its place, the Department has inserted language on the effects of recipient compliance with regulations of other Federal agencies where such regulations overlap with the administrative requirements of these regulations. This has been done to emphasize that the Department does not wish to create unnecessary administrative burdens for recipients.

Section 15b.11 Interagency cooperation.

The language on interagency cooperation has been deleted because it required action by Federal agencies and is therefore not appropriate in a regulation intended for recipients. The Department is nevertheless committed to the principle of such cooperation.

Subpart B—Employment Practices

Several commenters objected to Subpart B's general prohibition of discrimination in recipient employment practices. They argued that section 504 should only apply to employment practices when employment is a primary objective of Federal financial assistance or when the recipient's employment discrimination results in discrimination against the ultimate beneficiaries of the program. In support, they cited the language and legislative history of section 504; the limited applicability of Title VI to employment situations; judicial interpretations of Title IX of the

Education Amendments of 1972; Section 120(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978; and finally, the decisions in *Trageser vs. Libbie Rehabilitation Center, Inc.*, 590 F.2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979) and *Carmi v. Metropolitan St. Louis Sewer District*, 620 F.2d 672 (8th Cir. 1980).

The Department has studied the arguments of these commenters and the recent decision in *U.S. v. Cabrini Medical Center*, — F.2d (2d Cir. 1981) but has determined that Subpart B must be retained in view of the legislative history of the Rehabilitation Act of 1973 and its amendments, including the legislative history of section 102(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, the administrative construction of HHS and ED, and the remedial nature of section 504. However, *Trageser* is currently the law in Maryland, North Carolina, South Carolina, Virginia and West Virginia, the five states comprising the Fourth Circuit; *Carmi* is currently the law in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, the seven states comprising the Eighth Circuit; and *Cabrini* is currently the law in New York, Connecticut, and Vermont, the three states comprising the Second Circuit. Accordingly, pending further clarification of the law the provisions of this subpart will be enforced in the Second, Fourth and Eighth Circuit States only where employment is a primary objective of the Federal financial assistance or where discrimination against employees affects the ultimate beneficiaries of the assistance.

Section 15b.12 (formerly § 15b.13)
Discrimination prohibited.

Two changes have been made to this section. First, § 15b.13(a)(2) of the proposed regulations has been deleted. This paragraph required recipients that receive assistance under the Education of the Handicapped Act to take positive steps to employ and promote qualified handicapped persons in programs assisted under that Act. Since the Department does not administer programs under the Education of the Handicapped Act, the requirement is inappropriate for these regulations. Recipients of the Department who are also recipients of Education of the Handicapped Act assistance from an agency outside the Department will be subject to that agency's regulations.

The second change is the inclusion of volunteers in § 15b.12(a)(4). The

Department has added this language because it would be an anomalous result of the regulations to protect program beneficiaries and recipient employees from discrimination on the basis of handicap but not to protect qualified handicapped volunteers. Under the regulations, all provisions of Subpart B that apply to employees will apply equally to volunteers such as 4-H club leaders. This does not mean that the same procedures and benefits must be established for volunteers as for employees but that where comparable covered situations exist, discrimination is similarly prohibited. For example, recipients may not deny volunteer opportunities to classes of handicapped persons such as diabetics or refuse to provide reasonable accommodations to qualified handicapped volunteers unless such accommodations would impose an undue hardship on the operation of the program.

Section 15b.13 (formerly, § 15b.4)
Reasonable accommodation.

A number of comments were received on this section, most requesting more specific guidance on the meaning of the terms, "reasonable accommodation" and "undue hardship."

This section describes two general areas in which reasonable accommodations can be made, i.e., changes to the facility in which the handicapped person is employed and modifications to the handicapped employee's job or work environment. Within these two categories there are an indeterminable number of specific accommodations varying according to the purpose of the assisted program, nature and resources of the recipient, job requirements, handicapping condition, preferences of the handicapped person, and other factors.

While a list of possible accommodations could be constructed, the *reasonableness* of such accommodations could not be determined without considering the specific compliance situation. For example, the provision of deaf interpreters may be a reasonable accommodation for a recipient governmental entity but may constitute an undue hardship for an individual entrepreneur who is a recipient. Examples of percent budget expenditures for accommodations would be inappropriate for many recipients and would quickly become outdated. The Department does not, however, consider expenditure of more than a negligible amount to be, in itself, an undue hardship.

While the Department has not provided a listing of possible reasonable

accommodations, it is committed in its compliance procedures to provide assistance and guidance to recipients to help them comply voluntarily with the regulations in this part. In addition, recipients can obtain substantial assistance through consultation with handicapped persons during the self-evaluation process.

A new criterion, "the number of employees," has been added to the factors to be considered in judging whether an accommodation imposes an undue hardship on the operation of a recipient's program (§ 15b.13(c)). The Department believes that examination of the number of persons employed by a recipient is important in evaluating a recipient's ability to restructure jobs or work schedules.

Two commenters recommended that a handicapped person's ability to work safely be added to the factors for judging whether an accommodation would create an undue hardship. The Department gave serious consideration to this suggestion but decided that it was unnecessary since reasonable accommodations are only required for qualified handicapped persons. If safe procedures are essential to a job function, handicapped persons, like other applicants or employees, must meet valid safety standards in order to be considered qualified.

One commenter recommended that all deaf interpreters be required to meet certain standards of proficiency and ethical conduct. These regulations do not set such standards because of the diverse circumstances under which interpreters may be used and the availability of highly qualified interpreters. Nevertheless, recipients should be aware that the basic requirement of the regulation is to make assisted programs accessible to handicapped persons, and that the quality of interpreters provided has a direct effect on the ability of handicapped persons to participate fully in the recipient's program or to take advantage of employment opportunities.

Subpart C—Program Accessibility

Section 15b.18 Existing facilities.

The numerous comments received on this section reflect the public's great concern over the potential financial costs of making assisted programs accessible. The Department believes that many of these concerns are based on a misunderstanding of the requirements of the regulations. For those rare situations in which the achievement of program accessibility is infeasible, the Department, in certain

instances, less provided avenues for referrals or for modifications to the requirements of the regulations.

Section 15b.18(b) Methods.

This is a critical section of the regulations in that it specifies when structural alterations are required in existing facilities as opposed to less costly methods of making programs accessible. It cannot be emphasized too strongly that the purpose of this section is to make programs, not buildings accessible. Existing buildings or facilities must be made accessible only when program services cannot be adequately provided through any other method. Structural modifications are then only required to the extent necessary to deliver the program benefit. This concept is particularly important in situations where facilities have historical significance.

In choosing among nonstructural methods of making programs accessible, recipients must give priority to those methods which offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefit of the program. The phrase, "to obtain the full benefit of the program," has been added in order to clarify the meaning of "most integrated setting appropriate."

To illustrate, State Departments of Social Services which contract with banks for the distribution of food stamps must ensure that handicapped persons have convenient access to food stamps. This does not mean that every bank must be accessible. Program accessibility can be accomplished by selecting enough accessible banks to give handicapped persons equivalent access to food stamps, by contracting with other accessible distributors, or by mailing or delivering stamps to handicapped beneficiaries. Since social interaction or a particular setting is not important to the distribution of food stamps, each of these alternatives would be acceptable. Recipients are encouraged, however, to provide services to handicapped persons in the same setting as is used to serve nonhandicapped persons.

On the other hand, a handicapped person could only enjoy the full benefits of a 4-H club program in an integrated setting. If the existing site of club meetings and activities is inaccessible, a recipient could make the program accessible by, among other methods, changing the site, providing aides, or making structural modifications to the existing site. Recent material on the subject of accessibility shows that such modifications can often be made at little cost.

One commenter asked whether facilities must be structurally changed for handicapped employees. Where employment is a primary objective of federal assistance, existing structures will have to be altered to make the program accessible to qualified handicapped participants unless the program can be made accessible through some other means. However, in all other programs assisted by this Department, a recipient need not make structural modifications for employees until a qualified handicapped employee is hired and the modifications are necessary as reasonable accommodations (§ 15b.13(b)). Recipients who foresee that the inaccessibility of their facility will exclude or discourage qualified handicapped employees are nevertheless encouraged to make such facilities accessible in advance of the employment of handicapped persons.

Section 15b.18(c) Small providers.

The term, "small providers," has been substituted for "small health, welfare, or social service providers," to more accurately reflect the broad range of recipients assisted by the Department of Agriculture. The referral option in this paragraph applies to all recipients including those operating educational programs, except where conflicting requirements of Subparts D, E, and F take precedence. Before referring a handicapped person to another provider, small recipients have the responsibility of ensuring that the other providers have accessible programs that will provide equivalent service to the handicapped person at no additional cost to the handicapped person.

Section 15b.18(d) Application for waiver of requirements

Many commenters requested some general relaxation of the strict requirement for program accessibility which might require alterations to existing facilities or the construction of new facilities. Some feared that they would be forced out of assisted programs because of their financial inability to make structural alterations or undertake new construction. Others pointed out that special problems are involved where facilities have historic significance.

Private schools, both church-related and independent, participate in the Department's school feeding programs. These recipients expressed concern over program accessibility requirements since many of their facilities are old and funds for renovation often limited. Unlike public schools, these private schools are generally not part of a school system in which some schools

could be made accessible to fulfill the requirement for program accessibility. Also, many private schools would be ineligible to make referrals under the small provider provision (§ 15b.18(c)) because they have more than 15 employees.

The Department was also advised that other private, nonprofit entities, such as camps and residential institutions for children and the elderly may encounter difficulty in achieving program accessibility. Like private schools, these entities are often small, without similar providers nearby for referrals, and lacking funds to make major alterations to facilities. Finally, the Department was made aware that recipients of special-use permits for land in national forests and recipients participating in forestry assistance programs on private lands may need to provide program accessibility in historic properties.

The Department remains convinced that accessibility problems can be resolved without imposing undue hardship on the operation of the recipient's program. Moreover, the rights of handicapped persons to accessibility are a much more compelling need than the temporary inconvenience that may result from the process of making programs accessible. Nonetheless, in rare instances where after completing a self-evaluation a recipient determines that program accessibility can only be accomplished through substantial modifications which would result in a fundamental alteration in the nature of the program, they may apply to the Secretary for a modification of the requirement.

Since substantial alterations to historic properties could negate the reasons for maintaining the property, the Department has added a provision allowing recipients to apply for a modification of the requirements of § 15.18.

Recipients may make such an application only after they have completed a self-evaluation which meets the requirements of § 15b.18(c) and which shows that the only method that can be used to make a program accessible is one which substantially impairs significant historic features of properties listed in the National Register of Historic Places. The Department believes that in most cases other effective methods will be identified during the self-evaluation process, especially if handicapped persons or organizations representing handicapped persons or organizations representing handicapped persons are properly involved. In addition, the Department

will provide necessary technical assistance to recipients who encounter special problems in achieving program accessibility.

Specific guidelines have been provided to assist recipients in making applications concerning properties listed in the National Register of Historic Places. The criteria have been recommended by the Advisory Council on Historic Preservation to eliminate any adverse effect of these regulations on properties that are included or that are eligible for inclusion in the National Register of Historic Places.

Section 15b.18(f) (formerly, § 15b.18(d))
Time period.

One commenter requested that the time period for complying with § 15b.18(a), except for structural changes, be extended to 180 days. Although the Department recognizes that 60 days may not be adequate time for recipients to relocate programs or take other nonstructural measures to make programs accessible, it has not changed the requirement. In cases where 60 days is not sufficient a recipient must take temporary measures such as making home visits or providing aides until permanent methods can be arranged. The purpose of the regulation is to ensure that handicapped persons are provided access to programs as soon as reasonably possible.

Section 15b.18(g) (formerly, § 15b.18(e))
Transition plan.

The time for completing transition plans has been changed from six months to one year to permit closer coordination of this activity with the self-evaluation process. The determination of necessary structural changes is a logical outgrowth of the recipient's analysis of total program accessibility and necessary program modifications. Since structural changes may take considerable time and since the three-year deadline for making alterations or constructing new facilities has not been changed, recipients should complete the transition plan as quickly as possible within the first year after the effective date of these regulations.

Transition plans prepared in compliance with regulations of other agencies may meet the requirements of § 15b.18(f). Similarly, the transition plan of a parent institution or prime recipient may satisfy requirements of § 15b.18(f) if all provisions of that section are met in regard to the recipient's program.

One commenter objected to this section on the basis that it required companies to involve noninterested outsiders in management decisions. The Department rejects this argument on two grounds. First, handicapped persons are

certainly interested in the continuing viability of recipient programs benefiting them. Second, although this section requires that recipients develop transition plans with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, final responsibility for the transition plan remains with recipients.

For specific information on physical barriers and appropriate modifications, recipients should consult the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1980). Former § 15b.18(f), "Notice," has been moved to § 15b.7. "Notice of nondiscrimination and accessible services," the general notice requirement for recipients.

Section 15b.19 New Construction

The standard which the Department will use for new construction and alterations is the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1980). Approval to incorporate this standard by reference into 7 CFR Part 15b was granted by the Director of the Federal Register on June 8, 1981.

This standard, approved by the Institute on March 3, 1980, is currently the best nationally-recognized standard available for making facilities accessible to physically-handicapped persons. It is the result of years of research and the advice of experts representing handicapped persons, the building industry, manufacturers, service providers, local governments, and Federal agencies, including this Department. If, at some later date, the four agencies authorized by the Architectural Barriers Act of 1968, Public Law 90-480, to prescribe standards for federally funded facilities decides to issue a uniform accessibility standard for the Federal Government, the Department will make appropriate changes in the regulations to incorporate that uniform standard.

Some facilities subject to the ANSI A117.1-1980 standard under these regulations will also be subject to a standard issued by either the General Services Administration (GSA) or the Department of Housing and Urban Development (HUD), two of the four standard-setting agencies under the Architectural Barriers Act of 1968. Both

the GSA Accessibility Standard (45 FR 67684 (1980), 41 CFR Part 101-19 (1980)) and the HUD Standard (36 FR 24437 (1971), 24 CFR Part 40) are being revised to conform to the Minimum Guidelines and Requirements for Accessible Design (46 FR 4270 (1981), 38 CFR Part 1190) issued by the Architectural and Transportation Barriers Compliance Board (ATBCB), the agency responsible for enforcing the Architectural Barriers Act of 1968.

Recipients whose facilities are subject to both ANSI A117.1-1980 under these regulations and either the GSA or HUD standard can generally comply with both by following the stricter standard. For example, a facility can be designed with accessible walks having a clearance of 48 inches to meet the ANSI requirements (4.3.3) of a 36 inch minimum clearance and the GSA requirement (4.2.2) of a 48 inch minimum clearance. The Department plans to issue guidelines on how recipients can meet both the standard set by this regulation and the standard required under the Barriers Act. Recipients may depart from particular requirements of A117.1-1980 by adopting different requirements, such as those in the GSA or HUD standards, if equivalent accessibility is provided. In most cases, the Department will consider the requirements of the GSA and HUD standards as providing such equivalent accessibility.

Only a few comments were received on this section and these focused on two areas: Potential loopholes for structural accessibility and possible misinterpretations by recipients covered by the Architectural Barriers Act of 1968 as well as section 504. One commenter was concerned that alterations made accessible and usable only "to the maximum extent feasible," according to § 15b.19(b), could compromise program accessibility. The Department does not foresee this result since program accessibility must be achieved regardless of the accessibility of building alterations, except in those cases specifically referred to in § 15b.18(c), § 15b.18(d), and Subparts D, E, and F.

Another commenter recommended that § 15b.19(c) be revised to require that "equivalent usability" be added to "equivalent access" in determining when deviations from the ANSI Standards shall be permitted. The Department has not made this change but intends to consider usability as well as accessibility, as both criteria are considered in the ANSI Standards.

Another commenter requested that the provision in § 15b.19(c) allowing

departures from the ANSI Standard where equivalent access is provided be deleted to prevent confusion in situations where a facility is covered by both the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151-4157, and section 504. Unlike the requirement of § 15b.19(c), regulations implementing the Architectural Barriers Act of 1968 permit departures from the required standard only after a formal waiver process. Despite this inconsistency, § 15b.19(c) has been retained to provide needed flexibility to recipients whose facilities are covered only by section 504.

A new section, § 15b.19(d), "Compliance with the Architectural Barriers Act of 1968," has been added to remind recipients that compliance with these regulations for program accessibility does not necessarily satisfy their responsibilities under the Architectural Barriers Act of 1968 as enforced by the Architectural and Transportation Barriers Compliance Board.

Subpart D—Preschool, Elementary, Secondary Adult and Extension Education

Two commenters recommended that Subpart D be deleted entirely as inappropriate for the Department of Agriculture's programs. This has not been done since the Department assists many education programs through grants, construction loans, revenues from national forest receipts, and feeding programs. Many of the recipients operating these programs are also recipients of assistance from the Department of Education. In order to simplify the compliance efforts of these recipients, the regulations of this subpart incorporate most of the language of the ED section 504 regulations (34 CFR 84.1-84.99 (1980)).

The title of this subpart has been revised to include adult and extension education. Adult education is already included in § 15b.20, "Applicability." Extension education is a major educational program assisted by the Department.

Section 15b.20 Applicability.

A separate reference to recipients has been deleted from this section to maintain consistency with § 15b.2, "Applicability." See the discussion of that section for an explanation of this change.

Extension education has been added to the list of program areas covered by this subpart.

Section 15b.22 Free appropriate public education.

One commenter recommended that § 15b.22(c)(2) be revised to require a recipient to provide transportation to handicapped persons participating in their programs as is required for handicapped persons placed in programs not operated by recipients. Under § 15b.22(c)(2), a recipient who places a handicapped person in a program which it does not operate, must assure that adequate transportation is provided at no greater cost than would be incurred if the handicapped person were placed in the recipient's program. The purpose of this regulation is to ensure that handicapped persons have equal access to education programs. The regulation does not imply an obligation for a recipient to establish transportation service to its own programs for either handicapped or nonhandicapped persons. However, if the recipient does provide transportation to its programs, that service must be equally accessible, in terms of convenience and cost, to both handicapped and nonhandicapped persons.

Section 15b.22(d) has been deleted as unnecessary. See ED's commentary to § 84.33(d) of its regulations (34 CFR Part 84, App.A (1980)). A new subparagraph has been added to inform recipients that they must be in compliance with this section by not later than September 1, 1982.

Section 15b.24 Evaluation and placement.

The Department received two comments concerning the title of § 15b.24(a), "Placement evaluation." The commenters were concerned that the use of "placement" instead of "preplacement" might imply that recipients could conduct evaluations of handicapped persons needing or believing to need special education or related services after an initial tentative placement. The Department does not intend this reading of the regulation and believes that the requirement for an evaluation to be completed before taking any action regarding initial placement or subsequent changes in placement is clear from the text of the subsection.

Section 15b.26 Nonacademic services.

Section 15b.26(d) Food services.

A number of comments suggested that the regulations should make more specific reference to Department programs, including school feeding programs. As a result, § 15b.26(d) has been added to address the most

commonly raised issues in school food services.

Section 15b.26(d)(1) requires recipients to serve special meals to handicapped persons whose handicap restricts their diet in such a way that they cannot fully participate in the recipient's meal program. It is the handicapped person's responsibility to inform the recipient of the need for special meals. Recipients may require medical certification that special meals are necessary on the basis of handicap, but are not required to do so by these regulations.

In providing special meals, recipients may not charge handicapped persons more than they would be charged for regular meals. For example, a handicapped person eligible for a free lunch could not be required to pay for a special meal.

Depending on the needs of individual handicapped persons, recipients may have to adjust food selections, portions, or methods of preparation. However, recipients are not obligated to establish new feeding programs for handicapped persons. For instance, a recipient operating a lunch program is not required to serve breakfast to handicapped persons.

Section 15b.26(d)(2) concerns the delivery of food services in existing facilities that are not completely accessible and usable. This section should be read in conjunction with § 15b.23(b), "Nonacademic setting," which requires that handicapped persons participate with nonhandicapped persons in meal services to the maximum extent appropriate to the needs of the handicapped person in question. This means that handicapped persons must be served in the same room or setting as nonhandicapped persons except where the needs of individual handicapped persons dictate that they be served in some other place or manner. Section 15b.26(d)(2) specifies that where serving lines, food dispensers, or furnishings in existing facilities are not completely accessible to and usable by handicapped persons, recipients may use aides, modifications to equipment, or other equally effective measures to provide food services to handicapped persons. The ultimate effect of such methods must be to provide handicapped persons with an opportunity to participate in the program that is equal to the opportunity which is available to nonhandicapped persons.

Section 15b.27 Extension education.

Many commenters advised the Department that Subparts D and E,

directed toward formal educational programs, were inadequate for cooperative extension education, an informal program with voluntary participants of wide-ranging ages and interests. The Department recognizes the special situations involved in the design of extension programs, the selection of delivery sites, and the development of program material, and consequently has added a new § 15b.27 to provide general guidance in these areas. This section is essentially an elaboration of § 15b.18(b) which explains options available to recipients for making programs accessible in existing facilities. Both § 15b.18(b) and § 15b.27 emphasize that program accessibility can often be achieved through methods other than building alterations or new construction and that structural modifications are, in fact, not required when other equally effective methods are available.

The first part of § 15b.27 is a general prohibition against discrimination and a requirement that the needs of qualified handicapped persons be taken into account in planning program activities. This parallels the proposed language for § 15b.27 which was directed toward preschool and adult education programs.

The second part of § 15b.27 discusses the specific accessibility problems of extension programs delivered at extension offices, at other publicly-owned facilities, at privately-owned facilities, and at camps. Where existing offices are inaccessible, program benefits may be delivered through other equally effective methods such as the use of alternate accessible locations, home visits, and written or telephonic communications. The key consideration is that these other methods must be equally effective.

To illustrate, a county agent's consultation with a mobility-impaired community leader could take place in that community leader's home or office rather than at the inaccessible office of the agent, provided that the agent's office was not essential to the consultation. If the community leader were named to an advisory board which regularly met in the agent's inaccessible office, provision would have to be made for the handicapped board member to participate in all board meetings. This could be accomplished by holding the meetings in other accessible locations, by relocating the county agent's office to an accessible facility, or by modifying the office. It would not be equally effective in this case for the county agent to meet individually with the handicapped board member since an

important aspect of the program is the interaction of the board members.

Where extension programs are delivered at publicly-owned facilities other than at recipient offices, these facilities must be accessible wherever possible. It is recognized that settings such as natural terrain cannot always be made accessible to handicapped persons. In these cases, recipients must use other equally effective methods to deliver the program benefits to qualified handicapped persons. These methods include redesigning the activity or some sessions of the activity. For example, recipients may continue to schedule nature walks in an undeveloped park, making accommodations for persons with visual, hearing, and limited mobility impairments, but would also have to arrange sessions in which comparable information is available to persons with severe mobility impairments through the use of lectures, visual aids, exhibits or other suitable techniques. Such alternate sessions cannot be limited only to handicapped persons.

Many extension activities take place in privately-owned delivery facilities which are often inaccessible. Such activities may continue in these facilities unless a handicapped person requiring accessibility is participating, has expressed an interest in participating, or is likely to participate. Thus, when a qualified handicapped person applies to join a homemakers group, the group must arrange to hold its meetings in an accessible place. Also, any of the group's activities which are open to the public and for which the accessibility requirements of those attending cannot be determined in advance will have to be conducted in accessible locations. Recipients should be aware that the Department intends to follow the HEW policy prohibiting the carrying of handicapped persons except as a temporary expedient when program accessibility can only be achieved through structural changes and in manifestly exceptional circumstances under controlled conditions (43 FR 36033, 36035 (1978)).

Camping programs, like other extension programs, must be accessible to qualified handicapped persons. This does not mean that every existing camp must be accessible but that the recipient's program as a whole must be accessible. If the camp that a handicapped person would normally attend is inaccessible, the recipient may assign that person to another accessible camp which it operates. In all camping activities, qualified handicapped persons must participate with

nonhandicapped persons to the extent appropriate to the needs of individual handicapped persons. Therefore, the recipient cannot limit qualified handicapped persons or any class of handicapped persons to one camp or camping session.

The third and final part of § 15b.27 requires that program materials be accessible to qualified handicapped persons with sensory or mental impairments. One commenter asked if all written materials provided through the extension education program would have to be put on tape. This is not the intent of the regulations. Accessibility to written materials can be achieved by having available Brailled or taped copies of the most commonly-requested publications and by providing other materials in alternate forms upon request. Volunteer services can frequently be obtained for Braille, taping, and other accommodations for persons with impaired vision or hearing. For persons with mental impairments, simplified versions of program materials may be necessary.

Section 15b.28 Private education programs.

Several comments were submitted regarding the requirement that private schools operating special education programs adopt the guidelines for evaluation, placement and procedural safeguards outlined in §§ 15b.24 and 15b.25. The commenters felt that these guidelines, developed by ED primarily for public elementary and secondary schools, were too burdensome for private schools, most of whom participate only in the Department's school feeding programs.

The Department has examined this issue carefully and has noted the differences that exist between public and private schools in regard to student bodies, curriculums, educational innovations, teaching staffs, administration, and financial resources. Additionally, the Department has considered the protections against discrimination that exist in Subpart A, including the grievance procedure which must be established by most recipients. On the basis of these factors, the Department has revised § 15b.28 to make only §§ 15b.22(b)(1)(i), 15b.23, and 15b.28 applicable to private schools. The effect of these sections is to require private schools to provide qualified handicapped students an appropriate education, in an integrated setting for both academic and nonacademic activities. Private school recipients will not be held to the technical requirements for special education in

§§ 15b.24 and 15b.25. However, such recipients who operate special education programs may not discriminate against qualified handicapped persons in the administration of their special education programs.

Subpart E—Postsecondary Education

Few comments were received on this section and no significant changes have been made. Two commenters recommended that the subpart be deleted as inappropriate for the Department's programs. This has not been done since the Department assists many postsecondary education programs, including postsecondary vocational education programs, through grants to support education programs, grants and cooperative agreements to support research, and construction loans. Most of the recipients operating these programs are also recipients of assistance from the Department of Education. In order to simplify the compliance efforts of these recipients, the regulations of this subpart incorporate most of the language of the ED section 504 regulations (34 CFR 84.1–84.99 (1980)).

Section 15b.29 *Applicability.*

A separate reference to recipients has been deleted from this section to maintain consistency with § 15b.2, "Applicability." See the discussion of that section for an explanation of this modification.

Section 15b.30 *Admissions and recruitment.*

One commenter suggested that when recipients make preadmission inquiries, § 15b.30(c), they be required to make clear to the applicant, as opposed to merely stating clearly, the limitations on the recipient's request for information on the applicant's handicapped status. The Department believes that the conditions set out in § 15b.30(c) provide adequate and enforceable protections for handicapped applicants.

Section 15b.31 *Treatment of students; general.*

Section 15b.31(c) has been revised to include "course" in addition to "course of study" among the aspects of a recipient's education program or activity from which a qualified handicapped person may not be excluded. This language was inadvertently omitted from the Department's proposed regulations.

Section 15b.32 *Academic adjustments.*

One commenter recommended that § 15b.32(d)(2) be amended to explicitly

require recipients to provide interpreters to hearing-impaired students when materials are delivered orally. This would enable hearing-impaired students to understand the lecture and participate in any discussion. The recommended amendment has not been adopted since not all orally-delivered information involves discussion.

Recipients are, however, required by §§ 15b.4(b)(1)(ii) and 15b.32(d)(i) to provide those auxiliary aids necessary to give qualified handicapped persons an equal opportunity to participate in their programs. If educational materials are delivered orally and discussed, hearing-impaired students must be provided those auxiliary aids that will allow them to participate fully and effectively in this activity.

Subpart F—Other Programs and Activities

Subpart F supplements Subparts A, B and C with specific requirements for some programs of the Department which are not covered by Subparts D and E. Few comments were received on this subpart and, with the exception of adding sections on food services and multi-family rental housing, only minor modifications have been made.

The title of the subpart has been changed from "Health, Welfare, Social and Other Services" to "Other Programs and Activities." This has been done to reflect the broad range of programs assisted by this Department.

Section 15b.36 *Applicability.*

A separate reference to recipients has been deleted from this section to maintain consistency with § 15b.2. An explanation of this change can be found in the discussion of that section.

Section 15b.37 (formerly, § 15b.37(d)) *Auxiliary aids.*

Several comments were received on the determination of appropriate auxiliary aids. It is the recipient's responsibility to make this determination after considering the nature of the program, the information being communicated or service being provided, and the needs of handicapped persons. Recipients are encouraged to consult with handicapped persons to learn which types of auxiliary aids are preferred.

Section 15b.40 *Food Services.*

Section 15b.40, "Food services," which is patterned after § 15b.26(d) has been added to clarify responsibilities of recipients operating assisted food service programs in institutions not covered by Subpart D.

Section 15b.41 *Multi-family rental housing.*

A new § 15b.41, "Multi-family rental housing," has been added to this subpart in response to the particular accessibility issues associated with this program. Issues not addressed in this section are, of course, covered by Subparts A, B, and C.

Section 15b.41(a) is a general prohibition of discrimination on the basis of handicap against qualified handicapped persons as defined in Subpart A.

Section 15b.41(b) outlines general requirements for making new multi-family rental housing projects structurally accessible to qualified handicapped persons. These requirements apply only to recipients that have entered into an agreement of assistance with the Department after the effective date of the regulations.

In setting these limits, the Department considered carefully the number of multi-family rental housing projects assisted between the effective dates of section 504 and these regulations, the housing needs of handicapped persons, the costs involved in retrofitting existing housing projects and the number of projects already covered by other accessibility standards. The Department concluded that application of the accessibility requirements of this section to existing projects could not be justified in light of previous agreements between the Department and recipients and would likely result in recipients assuming additional debt that would be passed on to tenants in the form of higher rents. Additionally, the Department determined that many existing multi-family housing projects are already at least minimally accessible due to standards prescribed by other regulations. A new subsection (c), discussed below, has been added to clarify program accessibility requirements for existing facilities.

The Department will consider adaptable as well as fully accessible units as meeting the requirements of this section. An adaptable unit is one which is basically accessible in terms of entry and circulation and which has been constructed to permit recipients to easily install grab bars, modify kitchen facilities, and make other standard adaptations at the time that a handicapped person needing these adaptations would rent the unit. In contrast, an accessible unit would be constructed with all accessibility features in place. One advantage of adaptable units is that they can be more easily rented to nonhandicapped person.

Another is that handicapped persons will be able to have installed only those accessibility features which they need and in the positions which will be most helpful to them.

The minimum number of accessible or adaptable units per housing project has been set at five percent or at least one unit, whichever is greater. This measure of accessibility is based on available data on the number of handicapped persons needing such housing nationwide, and the fact that many rental housing projects assisted by the Department have fewer than 20 units.

Because many of these housing programs are located in small rural communities where populations may differ from national averages, some flexibility has been built into the accessibility requirement by allowing a different percentage of accessible units where a market survey approved by the Department indicates that this would be more appropriate for a particular program and its service area.

As for the rental housing units themselves, they must be comparable in variety to other units in the project, must be rented at the same rates as other comparable units, and cannot be clustered at one site if the program encompasses more than one site. This means, for example, that a multi-family housing program consisting of 40 units, 20 each at two sites and divided equally between one and two-bedroom units, would have at least two accessible or adaptable units, one at each site, and one each of the one and two-bedroom styles.

Section 15b.41(c) outlines general requirements for making existing multi-family rental housing projects accessible to qualified handicapped persons. These requirements apply only to recipients that have entered into an agreement of assistance with the Department prior to the effective date of the regulations. In such situations, recipients must assure program accessibility in their projects. See § 15b.18 of the regulations and the appropriate part of this "Supplementary Information" for a discussion of program accessibility requirements. Efforts to provide program accessibility in existing facilities should begin when a qualified handicapped person applies for admission. Physical alterations to existing facilities to make them accessible must be completed within a reasonable amount of time after the unit becomes available for occupancy. Under normal circumstances, it is expected that the unit will be altered to meet accessibility requirements within 30 days of the time the unit becomes ready for occupancy.

The section also contains information on how the Department will help recipients to comply with program accessibility requirements. In general, the Department will consider applications by the recipient for subsequent loans to make existing facilities accessible or to construct additional accessible units. The Department will also consider requests to use the housing project's reserve fund account for making minor modifications to existing facilities in order to make them accessible.

Subpart G—Procedures

No substantive changes have been made to this subpart.

List of Subjects in 7 CFR Part 15b

Administrative practice and procedure, Civil rights, Handicapped.

For the reasons given above, Part 15b is added to Title 7 of the Code of Federal Regulations as set forth below.

Dated: June 3, 1982.

John R. Block,
Secretary.

Title 7 of the Code of Federal Regulations is amended by adding a new Part 15b as follows:

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

- Sec.
- 15b.1 Purpose.
- 15b.2 Applicability.
- 15b.3 Definitions.
- 15b.4 Discrimination prohibited.
- 15b.5 Assurances required.
- 15b.6 Designation of responsible employees and adoption of grievance procedures.
- 15b.7 Notice of nondiscrimination and accessible services.
- 15b.8 Remedial action, voluntary action, and self-evaluation.
- 15b.9 Effect of State or local law or other requirements, and effect of employment opportunities.
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Subpart B—Employment Practices

- 15b.11 Applicability.
- 15b.12 Discrimination prohibited.
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Subpart C—Program Accessibility

- 15b.16 Applicability.
- 15b.17 Discrimination prohibited.
- 15b.18 Existing facilities.
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Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

- 15b.20 Applicability.
- 15b.21 Location and notification.
- 15b.22 Free appropriate public education.
- 15b.23 Educational setting.
- 15b.24 Evaluation and placement.
- 15b.25 Procedural safeguard.
- 15b.26 Nonacademic services.
- 15b.27 Extension education.
- 15b.28 Private education programs.

Subpart E—Postsecondary Education

- 15b.29 Applicability.
- 15b.30 Admissions and recruitment.
- 15b.31 Treatment of students.
- 15b.32 Academic adjustments.
- 15b.33 Housing.
- 15b.34 Financial and employment assistance to students.
- 15b.35 Nonacademic services.

Subpart F—Other Programs and Activities

- 15b.36 Applicability.
- 15b.37 Auxiliary aids.
- 15b.38 Health care facilities.
- 15b.39 Education of institutionalized persons.
- 15b.40 Food services.
- 15b.41 Multi-family rental housing.

Subpart G—Procedures

- 15b.42 Procedures.
- Appendix A—List of USDA-Assisted Programs.

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978); Executive Order 12250, November 2, 1980, and 45 CFR Part 85.

Subpart A—General Provisions

§ 15b.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, as amended, to the end that no otherwise qualified handicapped individual in the United States shall solely by reason of his or her handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 15b.2 Applicability.

This part applies to all programs and activities that receive or benefit from Federal financial assistance extended by the Department of Agriculture after the effective date of this part whether or not the assistance was approved after the effective date. Subparts A, B, and C are of general applicability. Subparts D, E, and F are tailored to specific programs. Subpart G is procedural.

§ 15b.3 Definitions.

As used in this part, the term or phrase:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 390 (1973), as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-651, 88 Stat. 2 (1974) and Pub. L. 93-516, 88 Stat. 1617 (1974) and the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978). The Act appears at 29 U.S.C. 701-794.

(b) "Section 504" means section 504 of the Act, 29 U.S.C. 794.

(c) "Education of the Handicapped Act" means the Education of the Handicapped Act, Pub. L. 92-230, Title VI, 84 Stat. 175 (1970), as amended by the Education of the Handicapped Amendments of 1974, Pub. L. 93-380, Title VI, 88 Stat. 576 (1974), the Education for All Handicapped Children Act of 1975, Pub. L. 94-142, 89 Stat. 773 (1975), and the Education of the Handicapped Amendments of 1977, Pub. L. 95-49, 91 Stat. 230 (1977). The Education of the Handicapped Act appears at 20 U.S.C. 1401-1461.

(d) "Department" means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(e) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated or may delegate the authority to act under the regulations of this part.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Federal financial assistance" or "assistance" means any grant, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of Federal personnel;
- (3) Real and personal Federal property or any interest in Federal property, including:

(i) A sale, transfer, lease or use (on other than a casual or transient basis) of Federal property for less than fair

market value, for reduced consideration or in recognition of the public nature of the recipient's program or activity; and

(ii) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal share of its fair market value is not returned to the Federal Government.

(4) Any other thing of value.

(h) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(j) "Physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(k) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(l) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(m) "Is regarded as having an impairment" means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such an impairment.

(n) "Qualified handicapped person" (used synonymously with "otherwise qualified handicapped individual") means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which non-handicapped persons are provided such services, (ii) of an age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under Section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets all academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(o) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (i) of this section.

(p) For purposes of § 15b.18(d), "Historic preservation programs" means programs receiving Federal financial assistance that has preservation of historic properties as a primary purpose.

(q) For purposes of § 15b.18(d), "Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places.

(r) For purposes of § 15b.18(d), "Substantial impairment" means a significant loss of the integrity of finished materials, design quality or special character which loss results from a permanent alteration.

§ 15b.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any

program or activity receiving assistance from this Department.

(b) *Discriminatory actions prohibited.*

(1) A recipient, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or services;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or services that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate as that provided to others;

(iv) Provide a different or separate aid, benefit or service to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with an aid, benefit or service that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any rights, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

(2) For purposes of this part, aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons, from denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, an aid, benefit or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 15b.6 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 15b.6 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

(c) The Secretary may require any recipient with fewer than fifteen employees to designate a responsible employee and adopt grievance procedures when the Secretary finds a violation of this part or finds that complying with these administrative requirements will not significantly impair the ability of the recipient to provide benefits or services.

§ 15b.7 Notice of nondiscrimination and accessible services.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The recipient shall also identify the responsible employee designated pursuant to § 15b.6(a), and identify the existence and location of accessible services, activities, and facilities. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, placement of notices in the recipient's publications, radio announcements, and the use of other visual and aural media.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or

publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 15b.8 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of Section 504 or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of Section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part.

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 15b.9 Effect of State or local law or other requirements, and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 15b.10 Effect of compliance with regulations or other Federal agencies.

A recipient that has designated a responsible official and established a grievance procedure, provided notice, completed a self-evaluation, or prepared a transition plan in the course of complying with regulations issued by other Federal agencies under section 504 will be in compliance with § 15b.6, 15b.7, 15b.8(c), or 15b.18(f), respectively, if all requirements of those sections have been met in regard to programs assisted by this Department.

Subpart B—Employment Practices

§ 15b.11 Applicability.

This subpart applies to all programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.12 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis

of handicapped, be subjected to discrimination in employment under any program or activity receiving assistance from this Department.

(2) A recipient shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(4) All provisions of this subpart pertaining to employment, apply equally to volunteer service.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 15b.13 Reasonable accommodation.

(A) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise

qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and useable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provisions of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's programs, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of recipient's workforce;

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 15b.14 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The recipient shows that the test score or other selection criterion, as used by the recipient, is job-related for the position in question, and (2) the Secretary cannot show that alternative job-related tests or criteria are available that do not screen out or tend to screen out as many handicapped persons.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 15b.15 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 15b.8(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That (1) the recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts; and (2) the recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient for conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That (1) all entering employees are subjected to such an examination regardless of handicap; and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded the same confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the

condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 15b.16 Applicability.

This subpart applies to all programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.17 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving assistance from this Department.

§ 15b.18 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each assisted program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by qualified handicapped persons.

(b) *Method.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of § 15b.19, or any other method that results in making its program or activity accessible to qualified handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(c) *Small providers.* If a recipient with fewer than fifteen employees finds, after

consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than by making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible at no additional cost to handicapped persons.

(d) *Application for modification of requirements.* Recipients that determine after a self-evaluation conducted according to the requirements of § 15b.8(c), that program accessibility can only be accomplished through substantial modifications which would result in a fundamental alteration in the nature of the program, may apply to the Secretary for a modification of the requirements of this section.

(e) *Historic preservation programs.* *Application for waiver of program accessibility requirements.* (1) In the case of historic preservation programs, program accessibility means that, when viewed in its entirety, a program is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by handicapped persons. Methods of achieving program accessibility include:

(i) Making physical alterations which enable handicapped persons to have access to otherwise inaccessible areas or features of historic properties;

(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;

(iii) Assigning persons to guide handicapped persons into or through otherwise inaccessible portions of historic properties;

(iv) Adopting other innovative methods to achieve program accessibility. Because the primary benefit of an historic preservation program is the experience of the historic property itself, in taking steps to achieve program accessibility, recipients shall give priority to those means which make the historic property, or portions thereof physically accessible to handicapped individuals.

(2) Where program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the program accessibility requirement. In determining whether program accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:

(i) Scale of property, reflecting its ability to absorb alterations;

(ii) Use of the property, whether primarily for public or private purpose;

(iii) Importance of the historic features of the property to the conduct of the program; and,

(iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(3) Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 108 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR Part 800, prior to effectuation of structural alterations.

(f) *Time period.* A recipient shall comply with the requirements of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part and as expeditiously as possible.

(g) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Identify the person responsible for implementation of the plan.

§ 15b.19 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a

recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction is commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for "Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute Inc. (ANSI A117.1-1980), 1430 Broadway, New York, N.Y. 10018, which is incorporated by reference into this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Compliance with the Architectural Barriers Act of 1968.* Nothing in this section of § 15b.18 relieves recipients, whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) from their responsibility of complying with the requirements of that Act and any implementing regulations.

Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

§ 15b.20 Applicability.

Except as otherwise noted, this subpart applies to public and private schools, elementary, secondary, adult, and extension education programs and activities that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 15b.22 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of § 15b.23, § 15b.24, and § 15b.25.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education.* (1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, payment for the costs of the program. Funds

available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of their handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available in conformance with the requirements of this section and § 15b.23, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 15b.25.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this regulation. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time but in no event later than September 1, 1982.

§ 15b.23 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the

handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic setting.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 15b.26(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 15b.24 Evaluation and placement.

(a) *Placement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this section applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are

designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical conditions, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 15b.23.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 15b.25 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to action regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 15b.26 Nonacademic services.

(a) *General.* (1) Recipients to which this subpart applies shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical education and athletics, food services, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and assistance in obtaining outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics.

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with requirements of § 15b.23, and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(d) *Food services.* In providing food services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap.

(1) Recipients shall serve special meals, at no extra charge, to students whose handicap restricts their diet. Recipients may require students to provide medical certification that special meals are needed because of their handicap.

(2) Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all food services in the most integrated setting appropriate to the needs of handicapped persons as required by § 15b.23(b).

§ 15b.27 Extension education.

(a) *General.* A recipient to which this subpart applies that operates an extension education program or activity receiving assistance from this Department may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. A recipient shall take into account the needs of such persons in determining the benefits or services to be provided under the program or activity.

(b) *Program delivery sites.* (1) Where existing extension office facilities are inaccessible, recipients may make program services normally provided at those sites available to qualified handicapped persons through other methods which are equally effective. These methods may include meetings in accessible locations, home visits, written or telephonic communications, and other equally effective alternatives.

(2) For program services delivered at other publicly-owned facilities, recipients shall select accessible facilities wherever possible. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver program benefits to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(3) For program services delivered at privately-owned facilities, such as homes and farm buildings, recipients shall use accessible facilities whenever qualified handicapped persons requiring such accessibility are participating, have expressed an interest in participating, or are likely to participate. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver program benefits to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(4) Recipients shall make camping activities accessible to qualified

handicapped persons. Recipients are not required to make every existing camp, all existing camp facilities, or all camp sessions accessible, but recipients who operate more than one camp or session may not limit qualified handicapped persons to one camp or session.

(c) *Program materials.* Recipients shall make program materials accessible to qualified handicapped persons with sensory or mental impairments. Commonly-used materials shall be readily available in alternate forms such as Braille or tape. Upon request, recipients shall make other materials available through appropriate means such as Braille, tape, readers, large print formats, simplified versions, written scripts, or interpreters. Recipients need not provide individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.28 Private education programs.

(a) A recipient that operates a private elementary or secondary education program receiving assistance from this Department may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined by § 15b.22(b)(1)(i). Each recipient to which this section applies is also subject to the provisions of § 15b.23 and § 15b.26.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

Subpart E—Postsecondary Education

§ 15b.29 Applicability.

Subpart E applies to public and private postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.30 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may take inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.8(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 15b.8(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped: *Provided,* That (1) the recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and (2) the recipient states clearly that the

information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 15b.31 Treatment of students.

(a) *General.* No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 15b.32 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program or instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of

time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the students' achievements in the course, rather than reflecting the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.33 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a

whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 15b.34 Financial and employment assistance to students.

(a) *Provision of financial assistance.*

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 15b.35 Nonacademic services.

(a) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped

students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 15b.31(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Other Programs and Activities

§ 15b.36 Applicability.

Subpart F applies to programs and activities, other than those covered by Subparts D and E, that receive or benefit from Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

§ 15b.37 Auxiliary aids.

(a) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(b) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the

recipient to provide its benefits or services.

(c) For the purpose of this section, auxiliary aids may include Brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 15b.38 Health care facilities.

(a) *Communications.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(b) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(c) *Drug and alcohol addicts.* A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 15b.39 Education of institutionalized persons.

A recipient to which this subpart applies that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 15b.3(n)(2), in its program, or activity is provided an appropriate education, as defined in § 15b.22(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.

§ 15b.40 Food services.

(a) Recipients which operate food service programs assisted by this Department shall serve special meals, at no extra charge, to persons whose handicap restricts their diet. Recipients may require handicapped persons to provide medical certification that special meals are needed because of their handicap.

(b) Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all

food services in the most integrated setting appropriate to the needs of handicapped persons.

§ 15b.41 Multi-family rental housing.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in a multi-family rental housing program.

(b) *New construction.* (1) Recipients receiving assistance from the Department for multi-family rental housing projects constructed after the effective date of this part shall construct at least five percent of the units in the project or one unit, whichever is greater, to be accessible to or adaptable for physically handicapped persons. The requirement that five percent of the units in the project or at least one unit, whichever is greater, be accessible or adaptable may be modified if a recipient shows, through a market survey approved by the Department, that a different percentage of accessible or adaptable units is appropriate for a particular project and its service area.

(i) The variety of units accessible to or adaptable for physically handicapped persons shall be comparable to the variety of units available in the project as a whole.

(ii) No extra charge may be made for use of accessible or adaptable units.

(iii) A recipient that operates multi-family rental housing projects on more than one site may not locate all accessible or adaptable units at one site unless only one accessible or adaptable unit is required.

(2) Standards for accessibility are contained in Subpart C and in appropriate program regulations.

(c) *Existing facilities.* Recipients receiving assistance from the Department for multi-family rental housing projects constructed prior to the effective date of this part shall assure that their facilities comply with the program accessibility requirements established in Section 15b.18 if a qualified handicapped person applies for admission. Necessary physical alterations made pursuant to such requirements shall be completed within a reasonable amount of time after the unit becomes available for occupancy by the qualified handicapped person. Subject to the availability of funds and fulfillment by the recipient of all program eligibility requirements, the Department may assist recipients to comply with program accessibility requirements through methods such as (1) consideration of subsequent loan applications for purposes of making

existing facilities accessible or for the construction of additional units which are accessible and (2) consideration of approval to commit project reserve account funds for minor modifications in order to make existing facilities accessible.

Subpart G—Procedures

§ 15b.42 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 7 CFR 15.5–15.11 and 15.60–15.143.

Appendix A—List of USDA-Assisted Programs

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

Program	Authority
Administered by the Agricultural Cooperative Service	
1. Technical assistance for agricultural cooperatives.....	Cooperative Marketing Act of 1926, 7 U.S.C., Secs. 451–457.
Administered by the Agricultural Marketing Service	
2. Federal-State marketing improvement program.....	Sec. 204(b) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1623(b).
3. Market news service.....	Sec. 203(g) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1622(g), the Cotton Statistics and Estimates Act, as amended, 7 U.S.C. 471–476; the Tobacco Statistics Act, as amended, 7 U.S.C. 501–508; the Tobacco Inspection Act, 7 U.S.C. 511–511(a); the Naval Stores Act, 7 U.S.C. 91–99; the Turpentine and Rosin Statistics Act, 7 U.S.C. 2248; the United States Cotton Futures Act, 7 U.S.C. 15b; and the Peanut Statistics Act as amended, 7 U.S.C. 951–957.
Administered by the Agricultural Research Service	
4. Agriculture research grants.....	Secs. 1 and 10 of the Act of June 29, 1935, as amended, 7 U.S.C. 427 and 427i; and 202–208 of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621–1627.
Administered by the Agricultural Stabilization Conservation Service	
5. Price support programs operating through producer associations, cooperatives, and other recipients in which the recipient is required to furnish specified benefits to producers (e.g., tobacco, peanuts, sugar, cotton, rice, honey and soybeans price support programs).	Agricultural Act of 1949, as amended, 7 U.S.C. 1421–1447.
6. Disaster feed donation programs.....	Section 407 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1427.
Administered by the Cooperative State Research Service	
7. Payments under the Hatch Act.....	Hatch Act of 1887, as amended, 7 U.S.C. 361a–361i.
8. McIntire-Stennis cooperative forestry research.....	Act of October 10, 1952, as amended, 16 U.S.C. 582a–582a–7.
9. Payments to 1890 colleges and Tuskegee Institute for research.....	Sec. 1445 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3222.
10. Native latex research.....	Native Latex Commercialization and Economic Development Act of 1978, 7 U.S.C. 178 <i>et seq.</i>
11. Alcohol Fuels research.....	Sec. 1419 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3154.
12. Animal Health Research.....	Sec. 1433 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3195.
13. Competitive research grants.....	Sec. 2(b) of the Act of August 4, 1965, as amended, 7 U.S.C. 450(b).
14. Experiment station research facilities.....	Act of July 22, 1963, as amended, 7 U.S.C. 390–390j.
15. Special research grants.....	Sec. 2(c) of the Act of August 4, 1965, as amended, 7 U.S.C. 450(c).
16. Rural development research.....	Title V of the Rural Development Act of 1972, as amended, 7 U.S.C. 2661 <i>et seq.</i>
Administered by Extension Service	
17. Cooperative extension work.....	Smith-Lever Act, as amended, 7 U.S.C. 341–349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code Secs. 31–1719, Rural Development Act of 1972, as amended, 7 U.S.C. 2561 <i>et seq.</i> ; Sec. 1444 of the Food and Agriculture Act of 1977, 7 U.S.C. 3221.
Administered by Farmers Home Administration	
18. Farm ownership loans to install or improve recreational facilities or other nonfarm enterprises.....	Sec. 303 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1923.
19. Operating loans to install or improve recreational facilities or other nonfarm enterprises.....	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1942.
20. Soil and water conservation, (including pollution abatement facilities), and recreational facilities.....	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1921.
21. Financial and other assistance to landowners, operators, or occupiers to carry out land uses and conservation.....	Sec. 203 of the Appalachian Regional Development Act of 1965, as amended, 40 U.S.C. App. 203.
22. Rural renewal, resource, conservation development, land conservation and utilization.....	Secs. 31–35 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1010–1035.
23. Watershed protection and flood prevention program.....	Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001–1008.
24. Resource conservation and development loans.....	Sec. 32(a) of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011(e).
25. Farm labor housing loans.....	Sec. 514 of the Housing Act of 1949, 42 U.S.C. 1484.
26. Farm labor housing grants.....	Sec. 518 of the Housing Act of 1949, as amended, 42 U.S.C. 1486.
27. Rural rental housing for the elderly and families of low and moderate income persons.....	Sec. 515 of the Housing Act of 1949, as amended, 42 U.S.C. 1485.
28. Rural cooperative housing.....	Sec. 515 of the Housing Act of 1949, as amended, 42 U.S.C. 1485.
29. Rural housing site loans.....	Sec. 524 of the Housing Act of 1949, as amended, 42 U.S.C. 1490d.
30. Technical and supervisory assistance grants.....	Sec. 525 of the Housing Act of 1949, as amended, 42 U.S.C. 1490e.
31. Technical assistance grants.....	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
32. Rural housing self-help site loans.....	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
33. Mutual self-help housing.....	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
34. Water and waste facility loans and grants and community facility loans and grants.....	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1926.
35. Rural and industrial loan program.....	Sec. 310(a) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1932(a).
36. Private business enterprise grants.....	Sec. 310(c) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1932(c).
37. Area development assistance planning grant program.....	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1926(a)(11).
38. Energy impacted area development assistance program.....	Sec. 601 of the Power Plant and Industrial Fuel Use Act of 1976, 42 U.S.C. 8401.

Program	Authority
Administered by the Federal Grain Inspection Service	
39. Inspection administration and supervision	U.S. Grain Standards Act, as amended, 7 U.S.C. 71-87; and, Sec. 203(h) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1921-1930.
Administered by the Food and Nutrition Service	
40. Food stamp program	Food Stamp Act of 1964, as amended, 7 U.S.C. 2011-2027
41. Special supplemental food program for women, infants, and children (WIC)	Sec. 17 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1786.
42. Commodity supplemental food program	Sec. 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c; Sec. 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431.
43. Food distribution program	Sec. 416 of the Agricultural Act of 1949 as amended, 7 U.S.C. 1431; Sec. 32 of the Act of August 24, 1935 as amended, 7 U.S.C. 612c; Secs. 6, 13 and 17 of the National School Lunch Act, as amended, 42 U.S.C. 1755, 1761, 1766; Sec. 8 of the Child Nutrition Act of 1966, 42 U.S.C. 1777; Sec. 709 of the Food and Agriculture Act of 1965, as amended, 7 U.S.C. 1446a-1.
44. National school lunch program	National School Lunch Act, as amended, 42 U.S.C. 1751-1769a.
45. School breakfast program	Sec. 4 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1773.
46. Special milk program	Sec. 3 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1772.
47. Food service equipment assistance	Sec. 5 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1774; Sec. 5 of the National School Lunch Act, as amended, 42 U.S.C. 1754.
48. Summer food service program	Sec. 13 of the National School Lunch Act, as amended, 42 U.S.C. 1761.
49. Child care food program	Sec. 17 of the National School Lunch Act, as amended, 42 U.S.C. 1766.
50. Nutrition education and training program	Secs. 18 and 19 of the Child Nutrition Act of 1966, 42 U.S.C. 1787, 1788.
Administered by the Food Safety and Inspection Service	
51. Payments to States for the inspection of egg handlers to insure that they are properly disposing of restricted eggs.	Egg Products Inspection Act, 21 U.S.C. 1031-1056.
52. Financial and technical assistance to States for meat inspection activities.	Federal Meat Inspection Act, as amended, 21 U.S.C. 601-695.
53. Financial and technical assistance to States for poultry inspection activities.	Poultry Products Inspection Act, as amended, 21 U.S.C. 451-470.
54. Financial and technical assistance to States for meat and poultry inspection activities.	Talmadge-Aiken Act, 7 U.S.C. 450.
Administered by the Forest Service	
55. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Terr. Permit Act of March 4, 1915, as amended, 16 U.S.C. 497; Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
56. Permit for land use of Government-owned improvements by other than individuals at a nominal charge.	Sec. 7 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 580d.
57. Permits for disposal of common varieties of mineral materials from lands under the Forest Service jurisdiction for use by other than individuals at a nominal or no charge.	Secs. 1-4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601-603, 611.
58. Easements for use of National Forests and Grasslands by other than individuals at a nominal or no charge.	Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011; Sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
59. Easements for road rights-of-way over lands administered by the Forest Service.	Sec. 2 of the Act of October 13, 1964, 16 U.S.C. 533.
60. Road rights-of-way	Federal Highway Act of 1958, 23 U.S.C. 107, 317.
61. Rights-of-ways for wagon roads or railroads	Sec. 501 of the Act of March 3, 1899, 16 U.S.C. 525.
62. Timber granted free or at nominal cost to any group	Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
63. Transfer for fire-lookout towers, improvements and land to States political subdivisions.	Sec. 5 of the Act of June 20, 1958, 16 U.S.C. 565b.
64. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
65. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577g, 577g-1.
66. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to counties for schools and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
67. Cooperative action to protect, develop, manage, and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101-2111.
68. Advance of funds for cooperative research	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581i-1.
69. Grants for support of scientific research	Act of September 6, 1958, 42 U.S.C. 1891-1893.
70. Research cooperation	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C. 1600-1614.
71. Youth conservation corps State grant program	Act of August 13, 1970, as amended, 16 U.S.C. 1701-1706.
72. Young adult conservation corps State grant program	Secs. 601-609 of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 991-999.
73. Grants to Maine, Vermont, and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	Older Americans Act of 1955, as amended, 42 U.S.C. 3001-3057g.
74. Senior community service employment program (SCSEP)	Sec. 902(b)(2) of Title IX of the Older Americans Amendments of 1975, 42 U.S.C.
Administered by the Rural Electrification Administration	
75. Rural electrification and rural telephone programs	Rural Electrification Act of 1936, as amended, 7 U.S.C. 901-950b.
76. CATV, community facilities program	Secs. 306 and 310B of the Consolidated Farm and Rural Development Act of 1979, 7 U.S.C. 1926, 1932.
Administered by Science and Education Program Staff	
77. Higher education	Sec. 22 of the Act of June 29, 1935, as amended, 7 U.S.C. 329; Sec. 1417 of the Food and Agriculture Act of 1977, 7 U.S.C. 3152.
Administered by the Soil Conservation Service	
78. Soil and water conservation	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.
79. Plant materials for conservation	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.
80. Resource, conservation and development	Secs. 31 and 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1010, 1111; Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.
81. Watershed protection and flood prevention	Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001-1008.
82. Great plains conservation	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590g.

Program	Authority
83. Soil survey.....	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590e-590f, 590q.
84. River basin surveys and investigations.....	Sec. 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1008.
85. Snow survey and water supply forecasting.....	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590q.
86. Land inventory and monitoring.....	Secs. 1-6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a-590f, 590q; Sec. 302 of the Rural Development Act of 1972, 7 U.S.C. 1010e.
87. Resource appraisal and program development.....	Soil and Water Resources Conservation Act of 1977, 16 U.S.C. 2001-2009.
88. Rural clean water program.....	Clean Water Act, 33 U.S.C. 1251-1376.
89. Rural abandoned mine program.....	Secs. 406-413 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1236-1243.
90. Emergency watershed protection.....	Sec. 7 of the Act of June 28, 1938, as amended, 33 U.S.C. 701b-1; Sec. 403, Agriculture Credit Act of 1978, 16 U.S.C. 2203.
91. Eleven authorized watershed projects.....	Sec. 13 of the Act of December 22, 1944, 58 Stat. 905.
Administered by the Office of Transportation	
92. Transportation services.....	Sec. 201 of the Agricultural Adjustment Act of 1938, 7 U.S.C. 1291; Sec. 203(i) of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622(i); Sec. 104 of the Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1704.

[FR Doc. 82-15803 Filed 6-10-82; 8:45 am]

BILLING CODE 3410-95-M



AGE DISCRIMINATION ACT

"NO PERSON IN THE UNITED STATES SHALL ON THE BASIS OF AGE, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER, ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF EQUAL OPPORTUNITY
WASHINGTON, D.C. 20250

OCT 10 1979

IN REPLY

REFER TO: Age Discrimination

SUBJECT: Governmentwide Age Discrimination Regulations

TO: Agency Civil Rights Coordinators

This memorandum amends our previous memorandum on this subject dated July 20, 1979 concerning the effective date of governmentwide regulations prohibiting discrimination on the basis of age in programs and activities receiving federal financial assistance.

The Department of Health, Education and Welfare (HEW) has determined that the Act's prohibition against age discrimination became effective on July 1, 1979, the date the governmentwide regulations became effective. This means that complaints alleging discrimination on the basis of age occurring on or after July 1, 1979 may be filed now. Previously we told you that age discrimination complaints could not be filed until the department regulations are published.

OEO is in the initial stages of drafting Age Discrimination Regulations for USDA. Agencies will be invited to comment when the draft regulations are proposed. Your comments or questions are welcome at any time, however. OEO contacts on age discrimination are Carolyn Moore (75114) or Bill Payne (77327).

The governmentwide age discrimination regulations provided you last July establish a unique trial procedure for handling age discrimination complaints. All such complaints will be referred by OEO to the Federal Mediation and Conciliation Service (FMCS) where mediation will be followed to resolve complaints. If mediation is not successful, the complaint will be returned to OEO for handling under our regular complaint procedures.

The mediation process must be completed 60 days from the date a complaint is filed. FMCS has developed a timetable which requires that complaints reach them within 10 days of filing. This makes it essential for your agency to expedite the forwarding of complaints to this office. If your current procedures provide for routing through various offices, either field or headquarters, you should consider having complaints sent directly to OEO with a copy to those agency offices which need to know. In any event, complaints must reach OEO no later than seven days from receipt. FMCS will begin mediating complaints November 1.

A notice regarding the July 1, 1979 effective date of the Age Discrimination Act is being prepared by OEO for publication in the Federal Register.


JAMES FRAZIER
Director



United States
Department of
Agriculture

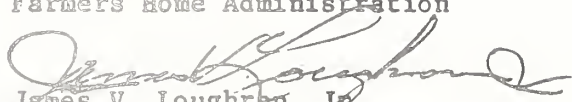
Office of
General
Counsel

Washington,
D.C.
20250

FEB 15 1983

Our Ref: LEG 5-3-1

TO: Charles W. Shuman
Administrator
Farmers Home Administration

FROM: 
James V. Loughran, Jr.
Assistant General Counsel
Community Development Division

SUBJECT: Age Discrimination Act

In answer to your memorandum of January 5, 1983, our review of the Age Discrimination Act (42 U.S.C. § 6101 et seq.) leads us to the conclusion that it would be a violation of that Act if:

- a. An FmHA-financed water system charged lower user fees for elderly people, or
- b. A recreation facility financed by FmHA charged lower user fees for elderly participants.

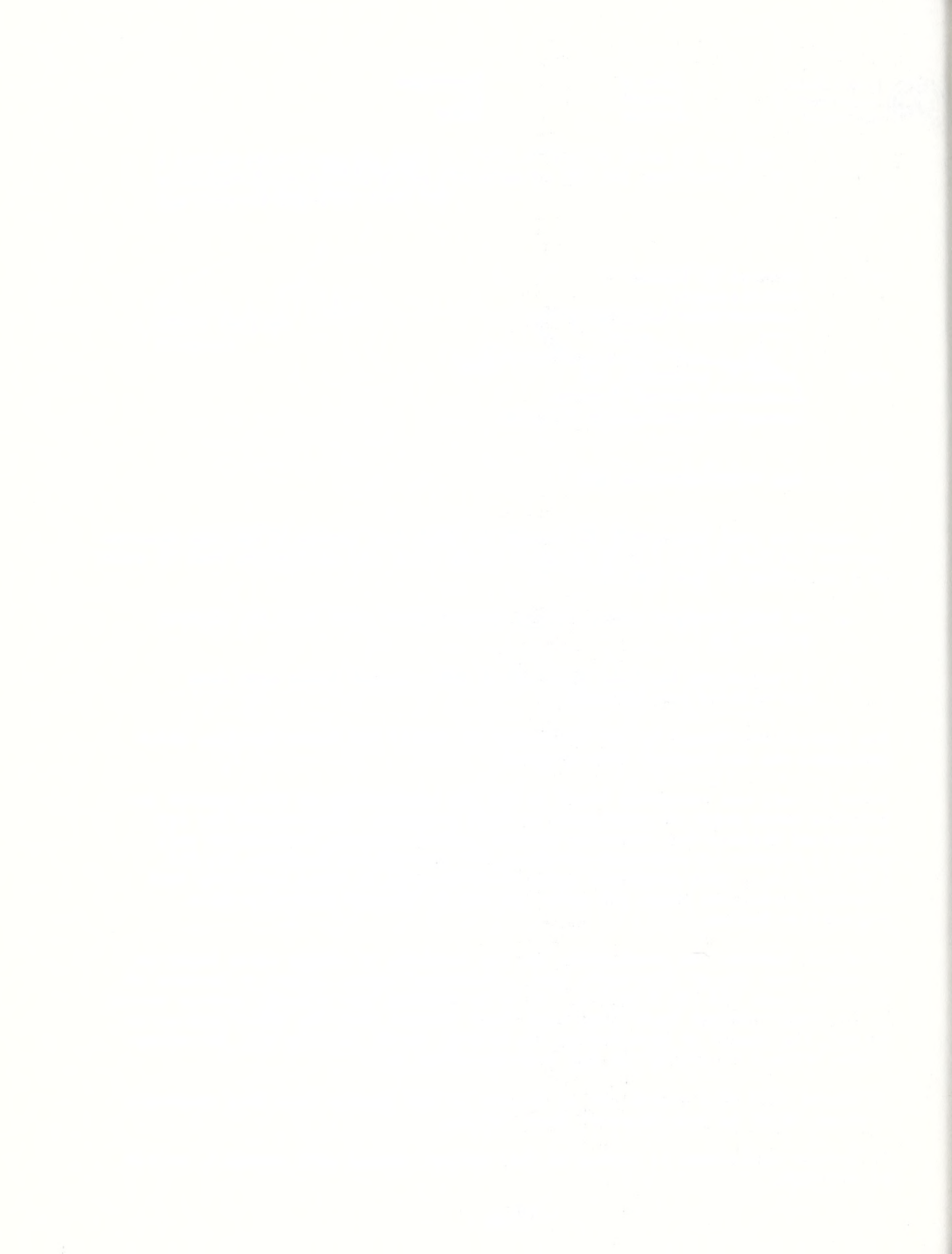
The regulations issued by the Department of Health and Human Services which implement the Act support this opinion.

There is only one exception found in the HHS regulations to this general prohibition which might be applicable to FmHA programs. This allows for age-determined distinctions where an elected general purpose legislative body adopts a statute or ordinance providing for age-related benefits (45 CFR § 90.3(b)(1)). This exception would be applicable in cases involving FmHA financed facilities where the rates are set by elected general purpose legislative bodies.

It would, however, be permissible for the facility to charge rates based on incomes, even though this might have a disproportionate effect on persons of different ages (45 CFR § 90.15). If it is assumed that elderly persons served by the FmHA-financed facilities have lower incomes than the other persons so served, the result of benefitting the elderly could, in this way, be accomplished without violating the Age Discrimination Act.

We assume this will enable you to respond to the inquiry from your Community Programs Chief in your Missouri State Office.

If further assistance is needed in this matter, please call Jerome G. Oslick on 447-7200.



Subpart D—Specific Operational Responsibilities of the Department and USDA Recipients

- 15c.13 Purpose of Subpart D.
- 15c.14 Written notice of obligations.
- 15c.15 Notice of sub-recipients.
- 15c.16 Technical assistance and educational materials.
- 15c.17 Self-evaluation.
- 15c.18 Information requirements.

Subpart E—Investigation, Conciliation and Enforcement Procedures

- 15c.19 Purpose of Subpart E.
- 15c.20 General.
- 15c.21 Compliance reviews.
- 15c.22 Complaints.
- 15c.23 Mediation.
- 15c.24 Investigation.
- 15c.25 Prohibition against intimidation or retaliation.
- 15c.26 Enforcement.
- 15c.27 Termination or refusal to continue Federal financial assistance.
- 15c.28 Procedures.
- 15c.29 Deferral of assistance.
- 15c.30 Alternate funds disbursement procedures.
- 15c.31 Remedial and affirmative action by recipients.
- 15c.32 Exhaustion of administrative remedies.
- 15c.33 Judicial review.
- 15c.34 Review of regulations.

Authority: Sec. 304, Pub. L. 94-135, 89 Stat. 729 (42 U.S.C. 6103).

Subpart A—General

§ 15c.1 Purpose.

The purpose of these regulations is to set forth USDA's policies and procedures for carrying out the provisions of the 1975 Age Discrimination Act, as amended, in a manner consistent with the general regulations promulgated by the Department of Health and Human Services (45 CFR Part 90). The Act and Part 90 prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act and Part 90 permit Federally assisted programs and activities and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and Part 90.

§ 15c.2 Applicability.

(a) The Age Discrimination Act and these regulations apply to any program or activity receiving Federal financial assistance, including programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.).

(b) The Age Discrimination Act does not apply to:

(1) age distinctions contained in Federal, State or local statutes or

ordinances adopted by an elected, general purpose legislative body which:

- (i) provide benefits or assistance based on age;
 - (ii) establish criteria for participation in age-related terms;
 - (iii) describe intended beneficiaries or target groups in age-related terms.
- (2) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), (29 U.S.C. 801 et seq.)

§ 15c.3 Definitions.

As used in these regulations:

"Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard or method of administration.

"Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "elderly," but not "student.")

"Agency" means any service, bureau, agency, office, administration, instrumentality, or corporation within the U.S. Department of Agriculture extending Federal financial assistance to any program or activity, or any officer.

"Applicant" means one who submits an application, request, or plan to be approved by the Department or by a primary recipient as a condition to eligibility for Federal financial assistance.

"Director" means the Director of the Office of Equal Opportunity.

"Department" means the U.S. Department of Agriculture, and includes each of its operating agencies and other organizational units.

"Discrimination" means the denial, on the basis of a person's age, of the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency

provides or otherwise makes available assistance in the form of:

- (a) Funds;
 - (b) Services of Federal personnel; or
 - (c) Real or personal property or any interest in or use of property, including:
 - (1) Transfers or leases of property for less than fair market value or for reduced consideration; and
 - (2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.
- "HHS" means the U.S. Department of Health and Human Services.
- "HHS guidelines" means the government-wide regulations on age discrimination, published on June 12, 1979.

"Lead agency" as defined in § 15c.12, means a Federal department or agency that is empowered by the Secretary of HHS to coordinate compliance and enforcement activities in those instances where two or more agencies provide assistance to the same recipient.

"Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

"Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient.

Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act in his/her stead under the regulations in this part.

"Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body.

"Sub-recipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A sub-recipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in this regulation.

"United States" means the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Mariana, and the territories and possessions of the United States.

Subpart B—Standards for Determining Discriminatory Practices

§ 15c.4 Purpose of Subpart B.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to these prohibitions.

§ 15c.5 Prohibitions against age discrimination.

The provisions stated in this section are limited by the exceptions contained in § 15c.6 and § 15c.7.

(a) General rule. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) Specific rules. A recipient may not in any program or activity receiving financial assistance from USDA directly or through contractual licensing, or other arrangement, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 15c.6 Exceptions to the prohibitions against age discrimination. Normal operation or statutory objective of any program or activity.

(a) A recipient is permitted to take an action, otherwise prohibited by § 15c.5, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity.

(b) This subsection establishes a four-part test for determining when an explicit age distinction is necessary to the normal program operations or necessary to achieve a statutory objective. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(1) age is used as a measure or approximation of one or more other characteristics; and

(2) the other characteristic(s) must be measured or approximated in order for normal operation of the program or activity to continue, or to achieve any

statutory objective of the program or activity; and

(3) the other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) it is impractical to measure the other characteristic(s) directly or on an individual basis.

(c) To qualify for an exception under this subsection an age distinction must meet all of the conditions of the four-part test.

(d) The provisions of this section are not provided to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience if this results in denial or limitation of services on the basis of age.

§ 15c.7 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 15c.5 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 15c.8 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 15c.6 and § 15c.7 is on the recipient of Federal financial assistance.

Subpart C—The Department's General Administrative Obligations

§ 15c.9 Purpose of Subpart C.

This subpart sets forth USDA administrative responsibilities for compliance with the Act and the HHS government-wide regulations.

§ 15c.10 Review of policies and administrative practices.

(a) The Department shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by the Department and whether those age distinctions are permissible under the Act and the HHS guidelines.

(b) No later than 12 months from the date of publication of the Department's final regulations, the Department shall publish, for public comment, a report in the Federal Register containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations that are to be continued;

(3) The justification under the requirements of the Act and the HHS guidelines for each age distinction to be continued;

(4) A list of age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of this Department's final regulations, the Department shall not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of this Department's final regulations, the Department shall not continue to use an existing age distinction, unless the age distinction has already been adopted by regulation or is thereafter adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 15c.11 Reports.

The Department shall submit to the Secretary of HHS not later than December 31, of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act;

(b) Contains data on the frequency, type and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the Department's progress in reducing age discrimination in programs receiving financial assistance from USDA;

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the Department has identified in any programs receiving financial assistance from USDA, and contains a statement on the progress towards eliminating it;

(d) Contains evaluative or interpretive information which the Department determines is useful in analyzing the Department's progress in reducing age discrimination in programs receiving USDA financial assistance; and

(e) Contains other data as requested by the Secretary of HHS.

§ 15c.12 Interagency cooperation.

The Department shall cooperate with other Federal agencies which provide Federal financial assistance to the same

recipient or class of recipients. Upon designation by the Secretary of HHS, USDA shall act as lead agency for compliance and enforcement with respect to the same recipient or class of recipients in other Federal agency programs, except for the ordering of the actual termination of funds and the notification of the appropriate committees of Congress in accordance with the provisions of the Act.

Subpart D—Specific Operational Responsibilities of the Department and USDA Recipients

§ 15c.13 Purpose of Subpart D.

This subpart sets forth the Department's operational responsibilities for compliance with the Act and the responsibilities of recipients and sub-recipients of USDA assistance to comply with the Act and these regulations.

§ 15c.14 Written notice of obligations.

USDA will provide written notice to recipients of their obligations of ensuring that programs and activities are in compliance with the Act and these regulations.

§ 15c.15 Notice to sub-recipients.

Where a recipient passes on Federal financial assistance from USDA to a sub-recipient the recipient must provide the sub-recipient written notice of its obligations under the Act and these regulations.

§ 15c.16 Technical assistance and educational materials.

(a) Upon request, the Department will provide technical assistance, where necessary, to recipients to aid them in complying with the Act and these regulations.

(b) Upon request, the Department will make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act and these regulations.

§ 15c.17 Self-evaluations.

(a) General. Each recipient and sub-recipient employing the equivalent of 15 or more full time employees shall complete a one-time written self-evaluation of its compliance under the Act and these regulations. The self-evaluation must be completed within 18 months of the effective date of these regulations and must be available to the Department and to the public upon request for a period of three years following its completion.

(b) Each recipient and sub-recipient in its self-evaluation shall identify and justify each age distinction it imposes on its programs and activities. Any single

age distinction can be evaluated in one page or less. Where no age distinctions are imposed, the self-evaluation needs only to state this fact. Factors other than age must be evaluated to determine if the factors bear a direct and substantial relationship to the normal operation of a program or activity or to the achievement of a statutory objective. If such a relationship can be demonstrated, then the action taken is not prohibited, even though it may have a disproportionate effect on persons of different ages.

(c) Each recipient/sub-recipient must justify the continued use of any age distinction it imposes as meeting the standards set in these regulations. Those age distinctions that do not meet all of the criteria established under the four-part test set forth in § 15c.8(b) and which cannot be justified as meeting the standards set in these regulations should be eliminated within 90 days of the self-evaluation.

(d) Each recipient and sub-recipient must make certain that it is not using any age distinction unless the distinction is:

(1) established under the authority of any law which provides benefits on the basis of age or in age-related terms;

(2) authorized by the regulations of the Federal agency providing the Federal financial assistance; or

(3) unless the distinction can pass the four-part test for age distinctions, set forth in § 15c.8(b), that are necessary to the normal operation or to the achievement of a statutory objective.

(e) Each recipient and sub-recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act and these regulations.

§ 15c.18 Information requirements.

Each recipient and sub-recipient shall, upon request:

(a) Make available to the Department information necessary to determine whether the recipient is complying with the Act and these regulations. This information may include analysis of existing data about compliance; such as complaint data and information about compliance reviews and data which is directly relevant to particular patterns or practices of discrimination revealed by complaints, compliance reviews or other compliance activities.

(b) Permit reasonable access by the Department to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act and these regulations.

Subpart E—Investigation, Conciliation and Enforcement Procedures

§ 15c.19 Purpose of Subpart E.

Subpart E sets forth the Departmental procedures to ensure compliance and enforcement of the Act and these regulations.

§ 15c.20 General.

(a) The Department shall attempt to secure recipient compliance with the Act by voluntary means which may include the use of the services of appropriate Federal, State, local or private organizations.

(b) If the corrective actions necessary to achieve voluntary compliance cannot feasibly be accomplished within 30 days, the recipient/subrecipient may file a corrective actions agreement with the Director outlining specific steps to be taken and a timetable to correct violations of the Act and these regulations.

(c) The Department has the responsibility of enforcing the Act when a recipient fails to eliminate violations. If voluntary compliance cannot be achieved, the Department will initiate enforcement proceedings in accordance with 15c.28.

§ 15c.21 Compliance reviews.

(a) The Department shall conduct compliance reviews, pre-award reviews, and other similar procedures which will permit it to ascertain compliance with the Act and these regulations.

(b) Compliance and pre-award reviews may be conducted in the absence of a specific complaint against a recipient to determine whether a violation of the Act or these regulations exists.

§ 15c.22 Complaints.

(a) Any person, individually or as a member of a class, may file a complaint with USDA alleging discrimination prohibited by the Act and these regulations. A complainant must file a complaint within 180 days from the date of the alleged act of discrimination, unless the time for filing is extended by the Secretary for good cause shown.

(b) Complaints alleging age discrimination in any program or activity receiving USDA financial assistance may be filed with the Director, Office of Equal Opportunity, Department of Agriculture, Washington, D.C. 20250.

(c) The Department will accept as a sufficient complaint any written statement which identifies the parties involved, and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of and is signed

by the complainant. The Department will permit a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(d) Upon receipt of the complaint the Director will review the complaint to assure that it falls within the coverage of the Act and these regulations and contains all information necessary for further processing.

(e) The Department will notify the complainant and the recipient of their rights and obligations under the complaint procedure including the right to have a representative to all stages of the complaint procedure.

(f) The Department will notify the complainant and the recipient of their rights to contact the agency for information and assistance regarding the complaint resolution process.

(g) The Department will return to the complainant any complaint outside the coverage of the Act and/or these regulations, and will state the reason(s) why it is outside the coverage of the Act and/or these regulations.

§ 15c.23 Mediation.

(a) Within 10 days of receipt, the Department will refer all complaints that fall within the coverage of the Act and these regulations, and contain all information necessary for processing, to the Federal Mediation and Conciliation Service.

(b) Both the complainant and the recipient shall be required to actively participate in the mediation process to the extent necessary to reach a speedy resolution of the complaint or to make an informal judgment that a mutually satisfactory agreement is not possible. Both parties need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach a mutual agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to the Department. The Department shall take no further action based on the original complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceedings, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the Federal Mediation and Conciliation Service.

(e) The Department will use the mediation process for a maximum of 60

days after receiving a complaint. Mediation ends if:

(1) 60 days elapse from the time USDA received the complaint without a mediated resolution of the complaint; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the mediator determines that an agreement cannot be reached.

(f) The Mediator shall return unresolved complaints to USDA.

§ 15c.24 Investigation.

(a) Initial Investigation

(1) The Department shall investigate complaints which are unresolved after mediation or are reopened because of a violation of the mediation agreement.

(2) As part of the initial investigation, the Department shall use informal fact finding methods including joint or individual discussions with the complainant and the recipient to establish the facts; and, if possible, to resolve the complaint to the mutual satisfaction of the parties. The Department may seek the assistance of any involved State program agency.

(b) Formal Investigation, Conciliation and Enforcement

If the Department cannot resolve the complaint during the early stages of the investigation, it shall:

(1) complete the investigation of the complaint;

(2) attempt to achieve voluntary compliance satisfactory to the Department, if the investigation indicates a violation; and

(3) arrange for enforcement as described in section 15c.26, if necessary.

§ 15c.25 Prohibition against intimidation or retaliation.

Recipients are prohibited from engaging in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the act and the regulations; or

(b) Cooperates in any mediation, investigation, hearing or other part of the Department's investigation, conciliation, and enforcement process.

§ 15c.26 Enforcement.

(a) The Department shall enforce the provisions of these regulations through:

(1) Suspension of, termination of, refusal to grant, or refusal to continue a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation shall be made only after a recipient has had an

opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State or local government agency which will have the effect of correcting a violation of the Act or these regulations.

(b) The Department will limit any termination under paragraph (a)(1) of this section to the particular recipient, and to the particular program or activity or portion thereof found to be in violation of the Act or these regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

§ 15c.27 Termination or refusal to continue Federal financial assistance.

(a) The Department will not initiate action to suspend, terminate, to refuse to grant, or to refuse to continue Federal financial assistance for failure to comply with the Act and these regulations until:

(1) The Secretary has advised the applicant or recipient of its failure to comply and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed from the date the Secretary forwards a written report of the circumstances and grounds of the action to committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The report shall be filed whenever any action is taken under paragraph (a)(1) of § 15c.26.

§ 15c.28 Procedures.

The procedural provisions relevant to assurances required, hearings and decisions and notices contained in the regulations to Title VI of the Civil Rights Act of 1964 are adopted and incorporated in this section by reference. These provisions may be found at 7 CFR 15.4, 15.9 and 15.10.

§ 15c.29 Deferral of assistance.

(a) The Department may defer granting new Federal financial assistance to a recipient when termination proceedings under § 15c.26(a)(1) have been initiated.

(1) New Federal financial assistance includes all assistance administered by or through the Department for which an application or approval, including renewal or continuation is required during the deferral period. New Federal

financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) The Department will not begin deferral until the recipient has been notified of the opportunity for a hearing under § 15c.26(a)(1).

(b) A deferral shall not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Department. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 15c.30 Alternate funds disbursement procedure.

(a) When the Department withholds funds from a recipient under these regulations, the Secretary may disburse the funds so withheld directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the Department's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the program or activity.

§ 15c.31 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the Department may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program or activity.

§ 15c.32 Exhaustion of administrative remedies.

(a) Under the provisions of these regulations, a complainant may file a civil action following the exhaustion of

administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the Department has made no finding with regard to the complaint; or

(2) The Department issues any finding in favor of the recipient.

(b) If either of the conditions set forth in § 15c.32(a) is satisfied, the Department shall:

(1) Advise the complainant of his or her right under section 305(3) of the Act to bring a civil action under the Act; and

(2) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business.

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action including reasonable attorney's fees but that these fees must be demanded in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Attorney General of the United States, the Secretary of HHS, the head of the granting agency, and the recipient.

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation is the subject of a pending action in any court of the United States.

Action taken pursuant to § 15c.26 is subject to judicial review as provided in section 306(a) of the Act.

§ 15c.34 Review of regulations.

Within 30 months after the effective date of these regulations, the Department shall publish in the Federal Register a notice inviting public comment on the effectiveness of these regulations. The Department shall assess the comments and publish the results of the review in the Federal Register.

This proposal has been reviewed under USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Draft Impact Analysis is available from Carolyn Moore, Office of Equal Opportunity, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated: September 10, 1980.

Bob Bergland,

Secretary of Agriculture.

(FR Doc. 80-23318 Filed 9-15-80; 8:45 am)
BILLING CODE 3410-01-M

Food Safety and Quality Service

7 CFR Ch. XXVIII

Food Grading Policy; Reopening of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: On May 30, 1980, the Department published in the Federal Register a document announcing options for possible proposed changes in its food grading policy. The positions are the result of (1) the Department's analysis and evaluation of its 1979-1980 survey on Consumer Perceptions of the USDA Food Grading Program, (2) consideration of several other reports and studies on this issue, (3) the Department's deliberation on this policy, and (4) a series of meetings with industry and consumer representatives in response to a recognized need to provide additional time to submit comments. The Department is reopening the comment period for 15 days.

DATE: Comments must be received on or before October 1, 1980.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: H. Connor Kennett, Jr., Director, Poultry and Dairy Quality Division, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4476.

SUPPLEMENTARY INFORMATION: On May 30, 1980, the Department published an Advance Notice of Proposed Rulemaking (45 FR 36417-36427) announcing options for possible proposed changes in its food grading policy. Interested persons were given until August 28, 1980, for comment.

During that period, the Department was engaged in various outreach programs to encourage consumer participation as well as a series of public hearings to gather data and views. The Department notes that the record on the last public hearing held in San Francisco on August 7, 1980, has only become available recently for public review. Thus, there is a need to

Tuesday
June 12, 1979

Part III

Department of
Health, Education,
and Welfare

Nondiscrimination on the Basis of Age in
Programs or Activities Receiving Federal
Financial Assistance

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

45 CFR Part 90

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Department of Health,
Education, and Welfare.

ACTION: Final rule.

SUMMARY: These regulations implement the provisions of the Age Discrimination Act of 1975, as amended (Act). They are general regulations designed to guide the development of agency specific regulations by each Federal agency which administers programs of Federal financial assistance. The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions which permit, under limited circumstances, continued use of age distinctions or factors other than age which may have a disproportionate effect on the basis of age. These regulations discuss what is age discrimination under the Act, the circumstances under which the statutory exceptions may be invoked, the responsibilities of Federal agencies and recipients to enforce the Act, and the procedures for investigation, conciliation, and enforcement. Each Federal agency which administers programs of Federal financial assistance must issue age discrimination regulations which conform to these general regulations.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT:
Bayla F. White, Director Age
Discrimination Task Force, Room 711-E,
Hubert Humphrey Building, 200
Independence Avenue, S.W.,
Washington, D.C. 20201, (202) 245-6284.

SUPPLEMENTARY INFORMATION:

Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, *et seq.*) as part of the Amendments to the Older Americans Act (P.L. 94-135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance, including the State and Local Fiscal Assistance Act of 1972. The Act also permitted federally assisted programs and activities, and recipients of Federal funds, to continue to use: (1) some age distinctions, and (2) "reasonable factors other than age." The Act applied to persons of all ages.

Prior to the enactment of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations.

After the receipt of the report of the Commission on Civil Rights and the Federal agency responses to that report, the Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (P.L. 95-478). Congress struck the word "unreasonable" from the statement of purpose clause, so that the purpose of the Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance. However, the Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) some age distinctions, and (2) "reasonable factors other than age." The Act continues to apply to persons of all ages.

According to the language of the Act, the prohibition against age discrimination will become effective when regulations are issued to enforce the Act. The Act requires the Secretary of HEW to publish proposed and then final general regulations. HEW issued proposed general regulations on December 1, 1978. These regulations are the final general regulations required by the Act. They set standards for other Federal agencies to follow in the development of agency specific regulations. The Act also requires each agency which provides Federal financial assistance to issue proposed and then final specific regulations. All agency specific regulations must conform to these general regulations and must be approved by the Secretary of HEW.

Rulemaking History

The Department of Health, Education, and Welfare has been vitally concerned about the need for public participation in the development of these regulations because of the substantial impact the Age Discrimination Act will have on the operation of federally assisted programs.

As the first step of its obligation to issue general regulations, HEW published in the Federal Register (43 FR 8756) a Notice of Intent To Issue Age Discrimination Regulations (NOI) on

March 2, 1978. The NOI briefly identified some of the major issues addressed later in the regulatory process. Persons wishing additional information on the age discrimination regulations were asked to write to HEW. Over 600 individuals and organizations responded to the NOI. These names were incorporated into a mailing list for distribution of materials developed during the rulemaking process.

Since these general regulations apply to all Federal departments and agencies which administer programs of Federal financial assistance, HEW created an Interagency Age Discrimination Task Force to coordinate the development of the regulations. The Interagency Task Force consists of at least one representative from every department or agency which ultimately must issue its own age discrimination regulations, as well as observers, from other interested Federal agencies. The Interagency Task Force met five (5) times during the development of the age discrimination regulations to consider both substantive and procedural matters. Consultations were also held with individual Federal agencies. The Interagency Task Force will continue to function during the development of agency specific regulations.

The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (p. 56428-56446) on December 1, 1978. The NPRM contained a discussion of the major issues and a section-by-section analysis of the proposed regulations as well as the text of the proposed rules. At certain key places in the proposed rules, HEW presented options for public consideration and comment. Publication of the proposed rules inaugurated a 90-day public comment period.

HEW distributed more than 16,000 copies of the proposed rules. Copies were mailed to every member of Congress, every State governor, the head of every Federal agency which provides Federal financial assistance, administrators of federally assisted programs, recipients of Federal funds at the State and local levels, interested individuals and groups. Special efforts were made to distribute copies of the NPRM to groups representing the interests of the elderly and of children and youth.

In January and early February, the Department held public hearings in Washington, D.C., and in each of HEW's 10 Regions in order to obtain public comment on the proposed rules. A total of 170 witnesses made presentations at those hearings. In addition, 246 letters were received containing comments.

criticisms and suggestions on nearly every section of the proposed rules. Comments made at the public hearings and in writing have come from individuals, from State and local governmental units, from providers of federally supported services, from public officials at the Federal, State and local levels, and a large number have come from groups representing the interests of the elderly. The comments and verbatim transcripts from the eleven hearings have been analyzed and used in the development of these final regulations. A summary of the comments received and the responses to those comments follow the text of these regulations.

Although the final government-wide regulations have been significantly affected by the comments received, the implementation of the Age Discrimination Act is a continuing process which provides several opportunities for public participation. Each agency providing Federal financial assistance must now issue its own proposed and then final, specific age discrimination regulations. The issuance of proposed agency regulations 90 days after these general regulations are published will provide another opportunity for the public to participate in the shaping of age discrimination policies. The actual impact of the Age Discrimination Act and the problems which recipients of Federal financial assistance may encounter in implementing these general age discrimination regulations will be examined after 30 months time. Similarly, each agency will examine and publish for comment its own assessment of the effectiveness of its age discrimination regulations after they have been in effect for 30 months.

HEW will amend and revise the government-wide regulations as need and experience dictate.

Overview of the Regulations

The following paragraphs summarize the text of the final regulations. The last section of the preamble contains a discussion of the resolution of certain major issues which were raised in the NPRM and an explanation of key parts of the text of the final regulations.

Subpart A—General

The four sections in Subpart A explain the purpose of the Age Discrimination Act (§ 90.1), the purpose of the general age discrimination regulations (§ 90.2), the programs and activities covered by the Act (§ 90.3) and the meaning of important terms used in the regulations (§ 90.4).

The Age Discrimination Act is designed to prohibit discrimination on the basis of age in programs or activities which receive Federal financial assistance. The Act also contains certain exceptions which permit age distinctions and factors other than age to continue in use under certain circumstances (§ 90.1). The Act applies to persons of all ages.

The Act generally covers all programs and activities which receive Federal financial assistance. However, the Act does not apply to any age distinction "established under authority of any law" which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions which are "established under authority of any law" may continue in use. These regulations (§ 90.3) define the phrase "any law" to mean Federal statutes, State statutes or local statutes adopted by elected, general purpose legislative bodies.

The Act also excludes from its coverage most employment practices, except for programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). These regulations do cover any program or activity which is both a program of Federal financial assistance and provides employment such as the College Work Study Program (42 U.S.C. 2751, *et seq.*) and the Work Incentive Program (42 U.S.C. 630, *et seq.*). The Age Discrimination in Employment Act (ADEA) which is administered by the Department of Labor, [Equal Employment Opportunity Commission (EEOC) after July 1, 1979], continues to be the Federal statute that prohibits employment discrimination for persons between the ages of 40 and 70. Individuals in this age range who experience employment discrimination, other than in CETA public service employment programs, must look to the ADEA for relief, not to the Age Discrimination Act.

Section 90.4 defines important terms used throughout these regulations.

Subpart B—What Is Age Discrimination?

This subpart sets out the rules against age discrimination and the conditions under which the statutory exceptions apply.

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance (§ 90.12(a)). This general rule is limited by the

exceptions which are contained in section 304 of the Act and which are explained in §§ 90.14 and 90.15 of these regulations. The specific prohibited actions, are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (45 CFR Part 80). As a general rule, separate or different treatment which denies or limits service from or participation in a program receiving Federal financial assistance will be prohibited by these regulations.

The Act contains several exceptions which limit the general prohibition against age discrimination. Section 304(b)(1) of the Act permits the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective. It also permits actions which are based on reasonable factors other than age. The regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective" (§ 90.13). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a Federally assisted program (§ 90.14). This four part test will be used to scrutinize age distinctions which are imposed in the administration of Federally assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations (§ 90.15), the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

The regulations place on the recipient the burden of proving that an age distinction or a factor other than age qualifies for an exception (§ 90.16).

Subpart C—What Are the Responsibilities of the Federal Agencies?

This subpart contains four sections which explain the responsibilities that

Federal agencies have to implement the ADA.

Each agency which extends Federal financial assistance must issue proposed and then final regulations to enforce the Act (§ 90.31). The agency-specific regulations must be consistent with these government-wide regulations and must be approved by the Secretary of HEW. The final agency specific regulation must contain an appendix listing all age distinctions which appear in Federal statutes and regulations which affect the agency's programs of Federal financial assistance. The appendix is the first step of a process set in motion by these regulations to inform the public of those age distinctions used in Federal Program administration. The appendix will *not* constitute agency approval or disapproval of the age distinctions contained in its regulations.

As a second step in this public information process, each Federal agency must review the age distinctions it imposes on its recipients by regulation or by administrative action to determine whether these age distinctions are permissible under the Act (§ 90.32). This review must be completed within 12 months after publication of the agency final regulations and must be published for public comment in the Federal Register. The report must indicate which age distinctions meet the requirements of the Act and will be continued and which will be eliminated. The report must identify age distinctions not in regulations which meet the requirements of the Act and which will subsequently be incorporated into regulations. Beginning with the effective date of an agency's specific regulations, no new age distinction may be imposed, unless it is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553). Beginning one year from the publication of an agency's specific regulations, no existing age distinction may be continued unless it has already been adopted by regulation or is adopted by regulation using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553).

The next two sections of the regulations (§§ 90.33 and 90.34) reflect HEW's goal of reducing administrative burden on recipients while still ensuring compliance with the Act. To avoid or minimize conflicting actions by different Federal agencies which deal with the same recipient, the Secretary of HEW may designate "lead agencies" to coordinate compliance and enforcement activities in those instances where two or more agencies provide assistance to

the same recipient (§ 90.33). Interagency cooperation may extend to all compliance and enforcement activities *except* for the actual termination of funds and the notification to Congress of that termination.

The Act requires each agency to report annually to the Congress, through HEW, on its compliance and enforcement activities. The final regulations adopt a targeted approach to data collection and analysis, which will maximize the opportunity to measure and analyze actual progress in complying with the Act and, at the same time, minimize the burden of unnecessary data collection on recipients (§ 90.34).

The targeted approach to data collection builds on the analysis of existing data about compliance, such as complaint data and information from compliance reviews. The regulations also provide for agencies to collect data which are directly relevant to particular patterns or practices of discrimination revealed by complaints, compliance reviews or other compliance activities. This targeted approach gives each agency the authority to tailor its own data collection to the characteristics of its programs, rather than establishing specific reporting requirements for every federally assisted program.

Subpart D—Investigation, Conciliation and Enforcement Procedures

This subpart of the regulations is divided into 10 sections dealing with various aspects of the compliance and enforcement process.

Each agency is required to establish procedures for compliance, investigation, conciliation and enforcement (§ 90.41). A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and must take necessary steps to eliminate any violations. An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. An agency must enforce the Act when a recipient fails to eliminate violations of the Act (§ 90.42).

Each agency is required to provide written notice to each recipient of the recipient's obligations under the Act, to provide technical assistance to recipients where necessary and to make available educational materials explaining the rights and obligations of beneficiaries and recipients (§ 90.43(a)).

Moreover, each Federal agency must direct its recipients which employ the equivalent of 15 or more persons on a full-time basis to prepare a written self-evaluation (§ 90.43(b)). A recipient's

self-evaluation will focus on age distinctions which are imposed directly by the recipient and not on any factors other than age. Each recipient must justify the continued use of any distinction as sanctioned under these regulations. A recipient must take corrective and remedial action whenever the self-evaluation indicates a violation of the Act. The recipient self-evaluation must be completed 18 months after the effective date of agency regulations. The self-evaluation must be available to the agency or the public for a period of three years following its completion.

Every agency must establish a procedure for processing complaints of age discrimination (§ 90.43(c)). The complaint handling procedure must include an initial screening by the Federal agency and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to a mediation process which will be managed by a single agency designated by the Secretary of HEW. That agency is the Federal Mediation and Conciliation Service (FMCS).

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint, although they need not meet with the mediator at the same time. The mediation process may last no more than 60 days from the date the agency first receives the complaint. The mediator will have the authority to terminate the mediation at any time before the end of the 60-day period if the process appears to have broken down. The terms of settlement that are satisfactory to both parties will be reduced to writing and sent to the Federal agency which referred the complaint. The Federal agency will take no further action on a complaint which has been successfully mediated.

If mediation does not succeed, or if a mediated settlement is violated, Federal agencies will engage in informal fact finding and then, if necessary, proceed to formal investigation of the complaint. The formal investigation may result in an administrative hearing before an administrative law judge. A Federal agency may terminate a recipient's Federal funds if the administrative law judge finds that the recipient has violated the Act.

The regulations of each Federal agency must provide that the agency may conduct compliance reviews, preaward reviews and use other similar procedures to determine compliance with the Act. These procedures are *not*

dependent on the filing of a complaint of age discrimination (§ 90.44).

To help determine whether a recipient is in compliance with the Act, each Federal agency may require its recipients to make their records reasonably accessible to the agency and to furnish information to the agency (§ 90.45). Recipients are prohibited from acts of retaliation or intimidation against individuals who file age discrimination complaints or who cooperate in any aspect of the enforcement process (§ 90.46).

After a hearing before an administrative law judge, a Federal agency may terminate Federal funds to a recipient found to have violated the Act or regulations implementing the Act. Termination must be limited to the particular recipient which has violated the Act and to the program where the violation has been found. An agency may delay granting new Federal funds to a recipient when termination proceedings have been initiated (§ 90.47).

When Federal funds are terminated, the agency may pay those funds to another qualified recipient which can demonstrate the ability to achieve the goals of the Federal program's authorizing statute and to comply with the Age Discrimination Act (§ 90.48). If a Federal agency or an administrative law judge, finds that a recipient has engaged in age discrimination, the recipient must take remedial action as the agency requires. Even in the absence of a finding of discrimination, recipients may voluntarily take affirmative action to encourage the participation of persons in age groups where participation has been limited in the past. The regulations permit a recipient to provide special benefits to children or the elderly provided that the benefits do not result in the exclusion of persons who are eligible to participate in the recipients' program (§ 90.49).

The Act authorizes a private right of action, when an individual has exhausted administrative remedies. The regulations implement that provision (§ 90.50). Administrative remedies are exhausted when either 180 days have elapsed from the filing of the complaint and the agency has made no finding or the agency issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court. The complainant must indicate at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same defendant is the subject of a pending action in any U.S. court.

Complainants who wish to file an action must give 30 days notice to the Attorney General, the Secretary of HEW, the head of the granting agency and the recipient.

Subpart E—Future Review of Age Discrimination Regulations

HEW must review the effectiveness of these general age discrimination regulations 30 months after the regulations take effect (§ 90.61). In addition, each agency must review the effectiveness of its own regulations 30 months after they become effective (§ 90.62). These reviews must be published in the Federal Register with an opportunity for public comment.

Critical Issues

Comments were submitted on many sections of the proposed regulations and on many different issues raised in the NPRM. These comments and the responses to them are set forth in the appendix which follows the text of the regulations. Some of the comments concerned critical policy issues with respect to the implementation of the Act. These critical issues are discussed in the following paragraphs.

1. What Ages Does the Act Cover?

Section 303 of the Act prohibits discrimination on the basis of age in federally funded programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its Conference Committee report that the Act is intended to apply to persons of all ages.

When the Act was originally passed in 1975, Congress directed the United States Commission on Civil Rights to conduct a study of age discrimination in federally funded programs, and required each affected Federal agency to respond to the Commission's study. After reviewing the Commission's report and Federal agency responses to it, Congress considered amendments to the Act. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons have suggested that HEW construe these general implementing regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act.

However, the Congress has consistently made clear its support for the concerns of older persons. It is

therefore unlikely that Congress intended the Act to call into question the generally accepted special benefits which are provided to older persons in programs that are otherwise available to a wider age range of the population. Public comment on the regulations was almost unanimously supportive of these benefits, which often take the form of special discounts. Similarly, no one has suggested that similar benefits for children should be questioned under the Act.

HEW supports the continuation of special benefits for children and older persons. Therefore, these regulations permit special benefits for the elderly persons and for children that are extended by recipients so long as they do not result in the exclusion from the program of otherwise eligible persons. (§ 90.49(c)).

2. Does the Act Require Proportional Allocation of Services and Funds by Age?

Commenters also asked whether the Act requires proportional allocation by age of the services and the benefits of federally assisted programs. Some believe that certain groups, especially the elderly, do not get their "fair share" of funds in certain programs or that certain program participation rates among age groups like the elderly are disproportionately low.

These final regulations do not require proportional program participation by age or the proportional allocation of funds by age. Discrimination has not been defined in this way in other non-discrimination regulations. However, disproportionate allocation of funds or program participation may be one of the elements which triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes. Comments on the NPRM suggested that there may be nondiscriminatory reasons which adequately explain the disproportionately low participation of the elderly in some programs.

3. What Programs or Activities are "Established Under Authority of Any Law"?

The Age Discrimination Act exempts from coverage age distinctions contained in a program or activity "established under authority of any law" which provides benefits on the basis of age or in age related terms. Congress did not expressly indicate anywhere in the legislative history of the Act what it meant by the term "any law." The regulations must, nevertheless, define the phrase "established under authority of any

law" in order to determine which age distinctions are exempted by this provision of the Act.

The NPRM presented four options for interpreting the phrase "any law" and asked for comments on those or any other reasonable interpretations. The NPRM cited two overriding issues to be considered in determining the meaning of "any law" (a) whether to include age distinctions contained in regulations; and (b) whether to include age distinctions enacted by State and local legislative bodies.

The narrowest option interpreted "any law" to mean only Federal statutes. The broadest option interpreted "any law" to include Federal, State and local statutes and Federal, State and local regulations. Supporters of defining "any law" to mean only Federal statutes argued that any other interpretation seriously weakens the Act. Congress could not have intended to give discretion to State or local legislative bodies to exempt any age distinction from the coverage of the Act. To do so would be an abdication of Federal responsibility which defeats the purpose of the Act.

Those who argued that "any law" should mean Federal and State statutes argued that the Act should permit the States to use age in exercising their traditional power in such areas as defining the age of majority, controlling access to a driver's license, and regulating compulsory school attendance. On the other hand, extending this exemption to local statutes and ordinances would permit thousands of local jurisdictions to introduce age distinctions into the administration of Federal programs which would fatally weaken the Act.

Supporters of defining "any law" to mean Federal, State and local statutes and ordinances argued that there is no clear basis for limiting the interpretation of "any law" to Federal statutes. Congress rejected an amendment to the Act in 1978 which would have defined "any law" to mean Federal statutes. Furthermore, there is no basis for excluding local statutes and ordinances if State statutes are included in the definition. They argued that no case has been made that age discrimination occurs as a result of age distinctions in State and local statutes and ordinances and that beneficial age distinctions are enacted by State and local legislative bodies.

Defining "any law" to include all regulations had relatively little support. Some suggested defining "any law" to mean Federal statutes and regulations. Supporters of including regulations in the definition argued that regulations

have the force and effect of law and should be included in the "any law" exemption. This position has been rejected on the grounds that it would permit administrators of federally funded programs to impose age distinctions which are not authorized by a legislative body. In addition, HEW does not believe that the language "established under authority of any law" necessarily includes regulations having the force and effect of law.

The final regulations define "any law" to mean Federal, State and local statutes and ordinances. The language of the statute, and the general lack of legislative history to justify any narrower interpretation of that language support the conclusion that Federal and State statutes, and statutes or ordinances enacted by general purpose, elected local governments should be exempt from coverage of the Act. This is particularly appropriate in the absence of any clear indication that age discrimination occurs as a result of State and local statutes. This definition of "any law" recognizes the authority of State and general purpose, elected local governments to enact statutes which condition benefits or participation on the basis of age.

Examples: "Established Under Authority of Any Law".

1. *Federal statutes.* The Adult Education Act (20 U.S.C. 1201-1213) is statutorily designed to provide services or instruction below college level for adults. The Act defines adults as individuals who have attained the age of 16. This limitation on participation in adult education programs is not covered by the Act. The Runaway Youth Program (42 U.S.C. 5701) authorized under the Juvenile Justice & Delinquency Prevention Act, awards grants for the development and/or strengthening of local facilities to address the immediate needs of runaway youth in a manner which is outside of the law enforcement and juvenile justice systems. The terms "runaway youth," "juveniles," and "young people" are used in the statute without further definition. Reasonable definitions of these terms would not be covered by the Act.

2. *State statutes.* Statutes setting age limitations on obtaining a driver's license or fixing age limits for compulsory school attendance are not covered by the Act.

3. *Local statutes or ordinances.* Age limitations on consuming alcoholic beverages or possessing firearms are not covered by the Act as long as these are adopted by an elected general purpose legislative body.

Note.—Any age distinction not exempted from coverage by the "any law" provision, may still qualify for an exception under another provision of the Act or these regulations.

4. *What are the Rules Against Age Discrimination?* Many commenters

asked for clarification of the rules against age discrimination contained in § 90.12 of the regulations. Section 90.12 sets forth a general rule against age discrimination which is based on Section 303 of the Act, and then presents specific rules against age discrimination. These rules are limited by the exceptions contained in the Act and these regulations.

The general rule in § 90.12 reflects the language of the Act: except as provided in the Act and these regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. It means that, unless sanctioned by one of the exceptions, recipients of Federal financial assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything not sanctioned by one of the exceptions to deny or limit persons in their efforts to participate in federally funded programs or activities on the basis of their age. For example, a medical school may not exclude persons from admission solely because of their age.

The prohibition against age discrimination does not include an absolute prohibition against separate or different treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving Federal financial assistance would be prohibited by these regulations. On the other hand, these regulations do not automatically invalidate the provision of services through separate or different treatment on the basis of age. Separate or different treatment necessary to normal operations or to the achievement of a statutory objective would qualify for an exception under these regulations.

Section 90.49 of these regulations contains language which affects the rules against discrimination in two important ways: a recipient may voluntarily act to overcome the effects of conditions which, in the past, have limited participation in a federally assisted program on the basis of age, and a recipient may provide special benefits for children or the elderly if, by so doing, the recipient does not exclude others who are eligible from participating in the federally assisted program. As mentioned earlier, HEW does not believe that Congress meant to disturb the practices of recipients which provide special benefits to children or

the elderly. For example, reduced fares for children and for senior citizens on public transportation or on railways or airlines would qualify as a special benefit under § 90.49 of these regulations. The definition of who qualifies as "children" or "elderly" for purposes of receiving a special benefit will be left to the reasonable discretion of the recipients who voluntarily provide the benefit.

5. *What are the Statutory Exceptions to the Rules Against Age Discrimination?* a. *Definitions of Statutory Objective and Normal Operation.* Many commenters questioned the meaning, clarity, and interpretation of the statutory exceptions to the prohibition against age discrimination contained in the proposed rules §§ 90.14 and 90.15.

Two phrases, "normal operations" and "statutory objective" are used in these regulations in interpreting the Act's exceptions for explicit age distinctions (§ 90.14) and for the use of factors other than age (§ 90.15). Critical to an understanding of these statutory exceptions is the definition of "statutory objective" and the definition of "normal operation."

The NPRM stated that statutory objective would mean either: (1) any purpose of a program or activity expressly stated in a statute, or (2) any purpose of a program or activity expressly stated in a statute or reasonably inferred from its provisions or legislative history. Because legislative history is a broad concept and because statutory objectives will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that the term "statutory objective" should be construed to mean only expressly stated objectives.

The NPRM was silent about whether the term "statutory objective" referred to Federal statutes, or State statutes, or local statutes, or all statutes. HEW believes the definition of "any law" in § 90.3 and the definition of "statutory objective" in § 90.13 should be parallel. Therefore, the final regulations define "statutory objective" to mean "any purpose of a program or activity expressly stated in any Federal statute, State statute or local statute or ordinance adopted by an elected, general purpose legislative body."

The final regulations have not changed the definition of "normal operation." "Normal operation" continues to mean "the operation of a program or activity without significant changes that would impair its ability to

meet its objectives." This definition of "normal operation" means that a recipient of Federal funds may not use the statutory exceptions to justify refusing to make changes in program operation because those changes disturb administrative routine or are inconvenient.

b. *The four-part test for determining when an explicit age distinction is necessary to normal program operations or necessary to achieve a statutory objective.* Section 90.14 establishes a four-part test for explicit age distinctions which are claimed to be necessary to the normal operation of a program or activity, or to the achievement of a statutory objective of a program or activity.

The NPRM provided that an action reasonably takes age into account as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity, if:

- (a) Age is used as a measure or approximation of one or more other characteristics (e.g., maturity);
- (b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
- (c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
- (d) The other characteristic(s) are difficult, costly, or otherwise impractical to measure directly.

The final regulations retain the four-part test, with some changes. The word "and" has been added after parts (a) and (b) to clarify the intent that an age distinction must meet all four parts in order to qualify for an exception. The reference to "maturity" has been deleted as an example of a characteristic for which age may be an approximation, because commenters felt that the term was too vague and did not illustrate what was meant in the test. The first part of the test in § 90.14 refers to a situation in which a program uses an age distinction as an indicator of some other characteristic, such as susceptibility to disease.

The third change occurs in part (d) of the test. The final regulations no longer contain a reference to cost or difficulty; however, part (d) now requires that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis.

Thus, to qualify for an exception under § 90.14, all four of the following conditions must be met: (a) the age distinction in question must be used as an indicator or measure of some other (non-age) characteristic; (b) the other

characteristic must be necessary for "normal operation" or for the achievement of a "statutory objective"; (c) the other characteristic must be capable of being reasonably approximated by age; and (d) the other characteristic must be impractical to measure directly on an individual basis.

The test set out in § 90.14 is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance. It is not intended to serve as a basis for permitting continued use of age distinctions for the sake of administrative convenience if this results in denial or limitation of services on the basis of age.

HEW encourages recipients to apply age distinctions flexibly; that is, to permit a person, upon a proper showing of the necessary characteristic to participate in the activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, an age distinction is more likely to qualify under one of the statutory exceptions if it does not automatically bar all those who do not meet the age requirements.

Examples: "Necessary to the Normal Operation of the Program."

1. A youth organization receiving Federal financial assistance imposes a maximum age limitation on membership. The organization claims that it has as an objective, the training, education and character development of youth. The use of a maximum age limit is necessary to the normal operation of the recipient's program because:

- (a) Age is used as a measure of the need for training, education, and character building experiences preparing for the assumption of adult responsibility; and
- (b) The need for the service must be measured in order for the youth organization's objective to be met; and
- (c) Age is highly related to the need for this service and is thus a reasonable measure of it; and
- (d) It is not practical to measure this need on an individual basis (i.e., while some persons over the age limit might benefit from the service and some persons under the age limit might not need it, there is no practical way to identify them on an individual basis).

2. A medical school receiving Federal financial assistance generally does not admit anyone over 35 years of age, even though this results in turning away highly qualified applicants over 35.

The school claims that it has an objective, the teaching of qualified medical students who, upon graduation, will practice as long as possible. The school believes that this objective requires it to select younger applicants over older ones.

The use of such an age distinction is not necessary to the normal operation of the

*The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

recipient's program because it does not meet the requirement of § 90.14(b).

Age of the applicant may be a reasonable measure of a non-age characteristic (longevity of practice). This characteristic may be impractical to measure directly on an individual basis. Nevertheless, achieving a high average longevity of practice for its graduates cannot be considered a program objective for a medical school within the meaning of the Act. The "normal operation" exception is not intended to permit a recipient to use broad notions of efficiency or cost-benefit analysis to justify exclusion from a program on the basis of age. The basic objectives of the medical school involve training competent and qualified medical school graduates. These objectives are not impaired if the average length its graduates practice medicine is lowered by a fraction of a year (or even more) by the admission of qualified applicants over 35 years of age.

Examples:* "Necessary to the Achievement of a Statutory Objective."

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "(B) contain assurances satisfactory to the Secretary that . . . the applicant will conduct such programs as may be necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such disease, and (ii) to facilitate their access to such measures and procedures." (42 U.S.C. 247b).

Under the test of § 90.14, it is necessary to the achievement of this explicit statutory objective to give priority in immunization to age categories most at risk to the disease in question because:

- (a) Age is being used as a measure of susceptibility to a disease; and
- (b) Susceptibility to disease must be measured for the statutory objective to be met; and
- (c) Age is a reasonable measure of susceptibility to the particular disease; and
- (d) Susceptibility to the disease is impractical to measure directly on an individual basis.

2. The purpose of the Adult Education Act (20 U.S.C. 1201 *et seq.*) is to provide education that will "enable all adults to continue their education . . . and . . . enable them to become more employable, productive, and responsible citizens." (20 U.S.C. 1201.) The Act defines an adult as "any individual who has attained the age of 16." (20 U.S.C. 1201(a).)

A recipient limits participation in its adult education program to adults under 35 on the grounds that this is necessary to achieve the explicit Adult Education Act objective of increasing employability, productivity, and responsibility.

It is not necessary to the achievement of this statutory objective to limit participation to those under 35. This age limitation fails at

least two elements of the four-part test set out in § 90.14. Employability, productivity and responsibility need not be measured in order to meet the statutory objective of making adults more employable, productive or responsible because the objective is comparative rather than absolute. The statute only requires an effort to improve these characteristics in an individual, not to maximize the degree of improvement.

These characteristics have no demonstrable correlation with age and cannot be reasonably measured by the use of age (§ 90.14(c)).

Whether or not these characteristics can practically be measured directly on an individual basis need not be considered, since the characteristics do not have to be measured in order to meet the statutory objective.

c. *Use of Reasonable Factors Other than Age.* Section 90.15 of the NPRM set out four options to characterize the relationship between a factor other than age that may have a discriminatory effect and the normal operation of a program or the achievement of a statutory objective. Those four options were rational, direct, substantial, and necessary. Commenters disagreed about what relationship a factor other than age should bear to the normal operation or the statutory objective of a program or activity.

The final regulations require that a factor other than age bear a direct and substantial relationship to the normal operation of the statutory objective of a program or activity. The "rational" option, which was equated in the NPRM with the rational basis test used under the equal protection clause of the Fourteenth Amendment, has been rejected on the grounds that many serious discriminatory effects created by factors other than age would be likely to survive a rational basis level of scrutiny.

The "necessary" option has been rejected because it requires a test which is not sufficiently flexible to deal with the variety of factors other than age and the variation in facts and circumstances that contribute to whether those factors other than age are "reasonable."

The regulations adopt the "direct and substantial" standard because it provides the appropriate flexibility and, at the same time, avoids the weaknesses inherent in the "rational" standard. Use of the "direct and substantial" standard means that use of factors other than age must be carefully examined in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is a sufficiently effective method of achieving a worthwhile program purpose to justify limiting or

denying services or participation to adversely affected persons.

Examples:* "Reasonable Factors Other Than Age."

1. A federally assisted training program uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that is *directly and substantially* related to the job for which persons are being trained and is, therefore, permissible under the Act.

2. The same program referred to in (1) above uses the same physical fitness test to select participants for a training program for clerical work. It claims that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered is *not direct and substantial*. It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would violate the Act.

3. *Cost/Benefit Analysis.* The NPRM raised the issue of whether cost-benefit considerations can justify the use of age distinctions or factors other than age. A majority of commenters expressed support for the NPRM position that a cost-benefit consideration by itself cannot be the sole justification for an exception under § 90.14 and § 90.15. Others, however, opposed any use of cost-benefit analysis in the administration of federally assisted programs.

The use of an explicit age distinction in the operation of a federally assisted program will have to be justified as necessary to the normal operation of the program or to the achievement of a statutory objective. That is, the explicit age distinction will have to meet the four part test of § 90.14 and cannot be disqualified or justified because it reflects a cost-benefit consideration. Use of a factor other than age will have to meet the test established in § 90.15 and cannot be disqualified or justified because it reflects a cost-benefit consideration. The scrutiny afforded age distinctions and factors other than age under these regulations should have the effect of screening out discriminatory cost-benefit considerations.

7. *Relationship Between General and Age-Targeted Programs.* Another major issue in the NPRM concerned similar services provided by both general and

* The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

* The examples illustrate general situations in which the regulations are applied to hypothetical recipients.

age-targeted programs. The question was whether the existence of an age-targeted program in any way relieved a general program of its obligation to serve the age group eligible for the age-targeted program.

Many commenters expressed the view that the general program was not relieved in any way of its obligation to serve everyone regardless of age. They reasoned that: the age targeted program was intended to supplement service for the eligible population, not to replace the services provided by the general program; an age-targeted program recognizes the special or additional needs of an age group, so that any restriction on the availability of services in a general program based solely on the existence of an age-targeted program would be discriminatory; administrators should not be given discretion to limit participation on the basis of age in a general program which Congress created to serve all ages.

Some commenters did say, however, that there are occasions when a general program should be permitted to deny services to an age group which is served elsewhere. They reasoned that the general programs can then focus on those in need who are not being served elsewhere; services offered in a general program should be based on the needs of the community as a whole and should take into account what is offered elsewhere; to require a general program to spread its limited resources to all age groups, regardless of the availability of similar services, would weaken the quality of the services provided. There was no support for the view that the general program's obligation was unconditionally lessened by the existence of the age targeted program.

The final regulations continue the policy expressed in the NPRM that, for a general program, any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if it meets one of the statutory exceptions under § 90.14 or § 90.15.

A general program can focus its services by referring persons to existing age targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services. However, HEW is persuaded that there are situations when referral to an age targeted program does not result in a denial or limitation of services. For example, a program which serves all ages may be aware of an age targeted program which, because of its specialization, offers better services to

that age group. A general program may have a waiting list of applicants while a similar age targeted program has space available. In situations like these, a general program could refer an applicant to the age targeted program provided that it had sufficiently well established relationship with the age targeted program to assure that the person referred actually received the service sought.

8. Mediation of Age Discrimination Complaints. The NPRM proposed that complaints of age discrimination be subject to mediation after initial screening by the Federal agency. The NPRM also proposed that participation in mediation be mandatory for both complainant and recipient and that administration of the mediation process be centralized in one government agency, the Federal Mediation and Conciliation Service (FMCS). These provisions of the NPRM have been kept in the final regulations.

While most commenters supported the proposed use of mediation, some commenters questioned the appropriateness of requiring mediation as the first step in resolving an age discrimination complaint. They argued that mediation promotes inappropriate bargaining over civil rights, that mediation may jeopardize the rights of complainants, that not every complaint is suitable for mediation, that mediation introduces a new and different step in the complaint resolution process which will be unnecessarily confusing to complainants and recipients.

HEW continues to believe that the mediation process is an important innovation in resolution of age discrimination complaints. Mediation is an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. Attempts to reach a mediated settlement of the complaint must be completed in the first 60 days after the complaint is received. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes has been that the 60 days set aside for mediation will not significantly delay the enforcement process.

Experience with mediation in other areas indicates that even the most intransigent parties can arrive at a mutually satisfactory resolution of their dispute. Consequently, HEW believes it is desirable to require that mediation be attempted in all complaints. Mediation does not necessarily mean that the two parties to the dispute must meet face to face; each may meet separately with the

mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. Since the cost of the mediator will be paid by the Federal government, the financial burden on complainants and recipients will be minimal. HEW believes that the ADA offers a unique opportunity to try this innovative approach to the resolution of disputes.

These regulations require that the management of the mediation process be centralized in one agency, designated by the Secretary of HEW. The FMCS will be that agency. Commenters critical of this decision questioned the wisdom of introducing a new agency into the civil rights enforcement process. Some suggested that each agency should manage its own mediation process, to permit the use of staff who would be more familiar with the program and problems of the Federal agency receiving the complaint.

HEW believes that the benefits to be realized by centralizing the management of the mediation process are substantial and that the FMCS is the appropriate agency for the job. The use of a single agency to manage the mediation process assures that uniform standards will be used in the recruitment and training of mediators, that the training will be centralized, that consistent procedures will be followed in the mediation, and that there can be a comprehensive and coherent evaluation of the process as part of the 30 month review of the effectiveness of these regulations. While the use of the FMCS does introduce a new agency into civil rights enforcement, one of the key elements in mediation is that both sides have confidence that the mediator is an independent third party. HEW believes that mediation of age discrimination complaints has a better chance to succeed if the mediator is not part of the staff of a Federal agency responsible for enforcing the Age Discrimination Act. The FMCS, which has an established reputation for mediating disputes, will draw on some of its experienced staff and will recruit and train a cadre of community based mediators who will work on age discrimination complaints.

After 30 months, HEW will evaluate the mediation process in accordance with § 90.81 of these regulations. The process will be used, revised or restructured as indicated by the results of that review.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below.

Dated: June 5, 1979.

Joseph A. Califano Jr.,

Secretary, Department of Health, Education, and Welfare.

The Department of Health, Education, and Welfare adds Part 90 to Title 45 of the Code of Federal Regulations as set forth below:

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

Sec.

- 90.1 What is the purpose of the Age Discrimination Act of 1975?
- 90.2 What is the purpose of these regulations?
- 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?
- 90.4 How are the terms in the regulations defined?

Subpart B—What is Age Discrimination?

(Standards for Determining Discriminatory Practices)

- 90.11 Purpose of this Subpart.
- 90.12 Rules against age discrimination.
- 90.13 Definitions of "normal operation" and "statutory objective."
- 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.
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Subpart C—What are the Responsibilities of the Federal Agencies?

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- 90.32 Review of agency policies and administrative practices.
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- 90.34 Agency reports.

Subpart D—Investigation, Conciliation and Enforcement Procedures

- 90.41 What is the purpose of this Subpart?
- 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?
- 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?
- 90.44 Compliance reviews.
- 90.45 Information requirements.
- 90.46 Prohibition against intimidation or retaliation.
- 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?
- 90.48 Alternate funds disbursement procedure.
- 90.49 Remedial and affirmative action by recipients.
- 90.50 Exhaustion of administrative remedies.

Subpart E—Future Review of Age Discrimination Regulations

- 90.61 Review of general regulations.
- 90.62 Review of agency regulations.

Authority: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

Subpart A—General

§ 90.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 90.2 What is the purpose of these regulations?

(a) The purpose of these regulations is to state general, government-wide rules for the implementation of the Age Discrimination Act of 1975, as amended, and to guide each agency in the preparation of agency-specific age discrimination regulations.

(b) These regulations apply to each Federal agency which provides Federal financial assistance to any program or activity.

§ 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?

(a) The Age Discrimination Act of 1975 applies to any program or activity receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*).

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body which:

- (i) Provides any benefits or assistance to persons based on age; or
- (ii) Establishes criteria for participation in age-related terms; or
- (iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA), (29 U.S.C. 801 *et seq.*).

§ 90.4 How are the terms in these regulations defined?

As used in these regulations, the terms:

"Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

"Agency" means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political sub-division, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

"Secretary" means the Secretary of the Department of Health, Education, and Welfare.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart B—What Is Age Discrimination?

Standards for Determining Discriminatory Practices

§ 90.11 Purpose of this subpart.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 90.12 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in sections 90.14, and 90.15 of these regulations.

(a) *General rule:* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 90.13 Definitions of "normal operation" and "statutory objective."

For purposes of sections 90.14, and 90.15, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by section 90.12, if the action reasonably takes into

account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 90.15 Exceptions to the rules against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by section 90.12 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 90.16 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in sections 90.14 and 90.15 is on the recipient of Federal financial assistance.

Subpart C—What are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

(a) The head of each agency which extends Federal financial assistance to any program or activity shall publish proposed and final age discrimination regulations in the Federal Register to:

(1) Carry out the provisions of section 303 of the Age Discrimination Act of 1975; and

(2) Provide for appropriate investigative, conciliation, and enforcement procedures.

(b) Each agency shall publish its proposed agency age discrimination regulations no later than 90 days after the publication date of the final general, government-wide age discrimination regulations.

(c) Each agency shall submit its final agency regulations to HEW for review no later than 120 days after publication of proposed agency age discrimination regulations.

(d) Final agency age discrimination regulations shall be consistent with these general, government-wide age discrimination regulations and shall not be published until the Secretary approves them.

(e) Each agency shall include in its regulations a provision governing the operation of an alternate funds disbursement procedure as described in section 90.48 of these regulations.

(f) Each agency shall publish an appendix to its final age discrimination regulations containing a list of each age distinction provided in a Federal statute or in regulations affecting financial assistance administered by the agency.

§ 90.32 Review of agency policies and administrative practices.

(a) Each agency shall conduct a review of age distinctions it imposes on its recipients by regulations, policies, and administrative practices. The purpose of this review is to identify how age distinctions are used by each Federal agency and whether those age distinctions are permissible under the Act and implementing regulations.

(b) No later than 12 months from the date the agency published its final regulations, the agency shall publish, for public comment, a report in the Federal Register containing:

(1) The results of the review conducted under paragraph (a) of this section;

(2) A list of the age distinctions contained in regulations which are to be continued;

(3) The justification under the requirements of the Act and these regulations for each age distinction to be continued;

(4) A list of the age distinctions not contained in regulations but which will be adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553; and

(5) A list of the age distinctions to be eliminated.

(c) Beginning with the effective date of an agency's final regulations, the agency may not impose a new age distinction unless the age distinction is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

(d) Beginning 12 months after the publication of its age discrimination regulations, an agency may not continue

an existing age distinction, unless the age distinction has already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553.

§ 90.33 Interagency cooperation.

Where two or more agencies provide Federal financial assistance to a recipient or class of recipients, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for the ordering of termination of funds and the notification of the appropriate committees of Congress.

§ 90.34 Agency reports.

Each agency shall submit to the Secretary not later than December 31 of each year, beginning in 1979, a report which:

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which the agency has identified in any programs receiving Federal financial assistance from the agency and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which the agency determines is useful in analyzing agency progress in reducing age discrimination in programs receiving Federal financial assistance from the agency; and

(e) Contains whatever other data the Secretary may require.

Subpart D—Investigation, Conciliation and Enforcement Procedures

§ 90.41 What is the purpose of this Subpart?

This subpart sets forth requirements for the establishment of compliance, investigation, conciliation, and enforcement procedures by agencies which extend Federal financial assistance.

§ 90.42 What responsibilities do recipients and agencies have generally to ensure compliance with the Act?

(a) A recipient has primary responsibility to ensure that its

programs and activities are in compliance with the Age Discrimination Act and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to an agency to the extent required to determine whether it is in compliance with the Act.

(b) An agency has responsibility to attempt to secure recipient compliance with the Act by voluntary means. This may include the use of the services of appropriate Federal, State, local, or private organizations. An agency also has the responsibility to enforce the Age Discrimination Act when a recipient fails to eliminate violations of the Act.

§ 90.43 What specific responsibilities do agencies and recipients have to ensure compliance with the Act?

(a) *Written notice, technical assistance, and educational materials.* Each agency shall: (1) Provide written notice to each recipient of its obligations under the Act. The notice shall include a requirement that where the recipient initially receiving funds makes the funds available to a sub-recipient, the recipient must notify the sub-recipient of its obligations under the Act.

(2) Provide technical assistance, where necessary, to recipients to aid them in complying with the Act.

(3) Make available educational materials setting forth the rights and obligations of beneficiaries and recipients under the Act.

(b) *Self-evaluation.* (1) Each agency shall require each recipient employing the equivalent of 15 or more full time employees to complete a written self-evaluation of its compliance under the Act within 18 months of the effective date of the agency regulations.

(2) Each recipient's self-evaluation shall identify and justify each age distinction imposed by the recipient.

(3) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(4) Each recipient shall make the self-evaluation available on request to the agency and to the public for a period of 3 years following its completion.

(c) *Complaints.*—(1) *Receipt of complaints.* Each agency shall establish a complaint processing procedure which includes the following:

(i) A procedure for the filing of complaints with the agency;

(ii) A review of complaints to assure that they fall within the coverage of the Act and contain all information necessary for further processing;

(iii) Notice to the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(iv) Notice to the complainant and the recipient (or their representatives) of their right to contact the agency for information and assistance regarding the complaint resolution process.

(2) *Prompt resolution of complaints.* Each agency shall establish procedures for the prompt resolution of complaints. These procedures shall require each recipient and complainant to participate actively in efforts toward speedy resolution of the complaint.

(3) *Mediation of complaints.* Each agency shall promptly refer all complaints which fall within the coverage of the Act to a mediation agency designated by the Secretary.

(i) The referring agency shall require the participation of the recipient and the complainant in the mediation process, although both parties need not meet with the mediator at the same time.

(ii) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to the referring agency. No further action shall be taken based on that complaint unless it appears that the complainant or the recipient is failing to comply with the agreement.

(iii) Not more than 60 days after the agency receives the complaint, the mediator shall return a still unresolved complaint to the referring agency for initial investigation. The mediator may return a complaint at any time before the end of the 60 day period if it appears that the complaint cannot be resolved through mediation.

(iv) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(4) *Federal initial investigation.* Each agency shall investigate complaints unresolved after mediation or reopened because of a violation of the mediation agreement. As part of the initial investigation, the agency shall use informal fact finding methods including joint or individual discussions with the complainant and the recipient to establish the facts, and, if possible,

resolve the complaint to the mutual satisfaction of the parties. The agency may seek the assistance of any involved State program agency.

(5) *Formal investigation, conciliation, and hearing.* If the agency cannot resolve the complaint during the early stages of the investigation, it shall:

(i) Complete the investigation of the complaint.

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in section 90.47, if necessary.

§ 90.44 Compliance reviews.

(a) Each agency shall provide in its regulations that it may conduct compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in section 90.47.

§ 90.45 Information requirements.

Each agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act; and

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

§ 90.46 Prohibition against intimidation or retaliation.

Each agency shall provide in its regulations that recipients may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the agency's regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under section 90.47(a)(1) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under section 90.47(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of

opportunity for a hearing under section 90.47(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 90.48 Alternate funds disbursement procedure.

When an agency withholds funds from a recipient under its regulations issued under section 90.31, the head of the agency may disburse the withheld funds so directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the program or activity.

§ 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 90.50 Exhaustion of administrative remedies.

(a) The agency shall provide in its regulations that a complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) If either of the conditions set forth in § 90.50(a) is satisfied the agency shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right, under section 305(e) of the Act, to bring a civil action for injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant:

(i) That a civil action can only be brought in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, the head of the granting agency, and the recipient;

(iv) That the notice shall state: the alleged violation of the Act; the relief requested; the court in which the action will be brought; and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That no action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Subpart E—Future Review of Age Discrimination Regulations

§ 90.61 Review of general regulations.

The Secretary shall review the effectiveness of these regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of these regulations, the Secretary shall publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

§ 90.62 Review of agency regulations.

Each agency shall review the effectiveness of its regulations in securing compliance with the Act. As part of this review, 30 months after the effective date of its regulations, each agency shall publish a notice of opportunity for public comment on the effectiveness of the agency regulations. Each agency shall assess the comments and publish the results of the review in the Federal Register.

Note.—The following comment analysis will not appear in the Code of Federal Regulations.

Comment Analysis

The following comments suggestions and criticisms were made at public hearings or submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change was deemed necessary or appropriate. The comments are grouped according to sections of the proposed rules and are arranged in sequence.

Subpart A—General

§ 90.1 What is the purpose of the Age Discrimination Act of 1975?

§ 90.1 Exclusive protection for the elderly.

Comment: A number of commenters stated that Congress intended the ADA to protect the elderly exclusively or to a greater extent than other age groups. These commenters cited the fact that the ADA is part of the Older Americans Act and that most of the debate on the Act concerned discrimination against the elderly.

Response: The House/Senate Conference Committee report is clear in stating that the ADA applies to persons of all ages. The regulations do not, therefore, limit protection to the elderly or to any other age group. HEW does not believe that this interpretation of the coverage of the Act will in any way diminish protection of the elderly.

§ 90.1 Reference to statutory exceptions

Comment: Several commenters were concerned specifically about the second sentence in § 90.1 of the NPRM which stated that the ADA permits the use of certain age distinctions and factors other than age. They felt the sentence weakened the intent of the ADA by emphasizing that some age distinctions are permitted.

Response: HEW agrees that the proposed wording may have created a wrong impression. HEW has modified the sentence to serve the intended purpose of informing the reader, early in the regulations, that the ADA specifically allows certain age distinctions.

§ 90.3 What programs and activities does the Age Discrimination Act of 1975 cover?

§ 90.3(b)(1) "Any law" exemption.

Comment: Many commenters responded to the issue presented in the NPRM of how "any law" should be interpreted. Although a number of commenters stated that "any law" should be interpreted to mean either Federal, State and local statutes and regulations, or Federal, State and local statutes, the majority of commenters favored either Federal and State statutes, or Federal statutes only. A small number of commenters supported an interpretation of Federal statutes and Federal regulations.

Response: A discussion of the four options (presented in the NPRM) for interpreting "any law", the commenters' reasons for supporting one of the options, and HEW's final choice appears in the preamble to these regulations.

§ 90.3(b)(2) Coverage of employment practices.

Comment: Many commenters discussed employment practices. Some requested clarification of the distinction between the ADA and Age Discrimination in Employment Act of 1967 (ADEA), which only covers persons between 40 and 70 years of age. These commenters were uncertain if persons under 40 or over 70 were covered under the ADA. Although the commenters recognized that CETA public service employment is covered by the ADA, they were concerned that the ADA regulations fail to reach other types of employment.

A few commenters supported the NPRM position that the ADA covers programs which are both financial assistance and employment, like the College Work Study Program and the Work Incentive Program. Many commenters suggested that mandatory retirement ages be prohibited.

Response: HEW has made no change in the text of the regulations. Section 304(a)(1) of the ADA excludes employment practices from coverage, except for CETA funded public service employment. The final regulations continue to apply only to programs that are both employment and Federal financial assistance, for example, the College Work Study Program. Other types of employment and employment practices, including mandatory retirement ages, clearly are not covered by the ADA and are not addressed in these regulations.

The ADEA, which the Equal Employment Opportunity Commission (EEOC) will administer beginning July 1, 1979, is the statute that addresses age discrimination in employment. However, the ADEA applies only to persons between the ages of 40 and 70.

§ 90.4 How are the terms in these regulations defined?

§ 90.4 Definition for the term United States.

Comment: Several commenters questioned whether the regulations applied to territories. The proposed rules defined the word "recipient" in terms of a State or its political subdivision, but did not mention territory.

Response: HEW has added "United States" to the definitions and has defined United States to include the territories.

This is consistent with the regulations implementing Title VI of the Civil Rights Act of 1964 (45 CFR Part 80) which define United States to include territory.

§ 90.4 Definition of other terms.

Comment: A few commenters suggested that the word *action* be defined to include the failure to take an action. Other commenters suggested that additional terms should be defined in this section, including *benefits or assistance*, *discriminate*, *undesirable age distinction*, *person*, *program* or *activity*. Commenters also suggested additions or changes to the definitions of *Federal financial assistance* and *recipient*.

Response: HEW has not changed the definition of *action*. A failure to act is an action and is covered by the definition. Many of the definitions including *Federal financial assistance* and *recipient* are designed to

coincide with the definitions in other civil rights regulations (covering prohibitions against race, sex, and handicap discrimination). HEW believes that definitions appearing in more than one of the civil rights regulations, should be consistent with one another.

HEW believes that the regulations are sufficiently clear concerning the meaning of the suggested terms and that further additions to the definition section would not add to the clarity of the regulations. The phrase *cooperative agreement* has been added to the definition of Federal financial assistance to reflect another type of assistance.

Support 3—What is Age Discrimination? (Standards for Determining Discriminatory Practices)

§ 90.13 Definitions of "normal operation" and "statutory objective."

§ 90.13(a) Definition of normal operation.

Comment: Several commenters supported the NPRM definition. Several other commenters stated that it was either unclear or too broad. Suggestions for making the definition clearer included the following: explain how the term will apply to new operations; define what constitutes a significant change; define how long a program's ability to meet its objectives must be impaired; and define how the program objectives should be determined. Suggestions for restricting the definition included: limiting the "normal operation" to a statutory objective; requiring that the operation be appropriate and not for administrative ease; or requiring that a change must impair substantially the program's achievement of a statutory objective.

Response: HEW has not changed the definition of "normal operation." The existing definition provides other governmental agencies flexibility in applying the definition to their own programs which receive Federal financial assistance. Since there is a wide variation in federally funded programs, HEW does not want to restrict other agencies from refining the definition of "normal operation" to suit the characteristics of their individual programs.

"Normal operation" is defined in a way that does not require a program to make any change in its operation so significant as to impair achievement of its objectives. At the same time, a recipient would be required to make a change that merely disturbs administrative routine or causes administrative inconvenience.

§ 90.13(b) Definition of statutory objective.

Comment: A number of commenters stated that the definition of "statutory objective" should include reasonable inferences from its provisions or legislative history.

Several commenters suggested that a statutory objective must be expressly stated in the statute. They feared that anything may be inferred from a statute or its legislative history.

A few commenters stated that the regulations should contain a discussion of the relationship between the normal operation and a statutory objective.

Another commenter stated that a statutory objective should be limited to a Federal statutory objective. One commenter stated that no definitions were necessary since § 90.14 provided a "functional way" of interpreting the terms.

Response: HEW has changed the definition of "statutory objective" to clarify that it refers to the objective of any applicable Federal, State or local statute. The final regulations provide that a "statutory objective" means expressly stated objectives of Federal, State or local statutes. HEW believes that the definitions of "statutory objective" and "any law" should coincide.

Since "legislative history" is a broad concept, and because the "statutory objective" exception will be used to justify the use of administratively imposed age distinctions or factors other than age which have a disproportionate effect, HEW believes that "statutory objective" should be construed to mean only the expressly stated objectives of any Federal, State or local statute which affects the provision of Federal financial assistance.

§ 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objectives of any program or activity.

§ 90.14 General use of this exception.

Comment: A large number of commenters stated that either age distinctions should not be permitted or should be permitted only under narrow circumstances. Several of these commenters cited the Civil Rights Commission's conclusion that factors other than age are nearly always available and should be used. Commenters suggested restricting the use of age distinctions to children's programs; situations where individual or public safety is concerned; or situations where alternative characteristics are not available.

Response: The ADA makes specific provisions for exceptions to the general prohibition against the use of age distinctions. Section 304(b)(1)(A) of the ADA permits an exception for actions which reasonably take into account age as a factor necessary to the normal operation or the achievement of a statutory objective of a program or activity. Section 304(b)(1)(B), permits a further exception from coverage under the Act for reasonable factors other than age. HEW believes that the intent of the ADA is conveyed most accurately by adoption of the specific statutory language into § 90.14 and § 90.15 of the regulations together with a strict four part test in § 90.14 and a narrow interpretation of reasonable factors other than age in § 90.15.

§ 90.14 Restriction on use of the exceptions.

Comment: Several commenters stated that the regulations should be altered to require that a program must accept any person who does not meet the program's age requirements, if the person possesses the characteristics for which age is a measure or approximation.

A few commenters suggested that the regulations should make clear that persons must not be excluded from programs or

activities on the presumption that because of their age they are economically, mentally, socially, or physically unqualified. An age classification, based on that kind of presumption, is an improper subterfuge for the real consideration.

Response: The ADA allows the use of age distinctions which are necessary to the normal operation or to the achievement of a statutory objective of a program or activity. The regulations implement this legislative provision and establish standards for determining whether an age distinction is necessary to the normal operation or to the achievement of a statutory objective. HEW believes that the four part test in § 90.14 establishes an appropriate standard. In determining whether an age distinction qualifies for one of the exceptions, it may be relevant that as a matter of policy the age distinction is not rigidly applied. That is, the recipient employing an age distinction may permit a person, upon a proper showing of the necessary characteristic, to participate in the program or activity even though that person would otherwise be barred by the age distinction.

§ 90.14 General comments on the four-part test for determining when an action reasonably takes age into account as a factor necessary to the normal operation or statutory objective.

Comment: Several commenters supported the four-part test. Several others stated that the criteria used in the test are unclear and difficult to interpret. Their reasons were that many of the terms used cannot be defined and that the issue of whether an action meets the criteria must be resolved on the basis of individual judgments.

Another commenter said that it was not clear whether all of the four-part test had to be met. A few commenters suggested that the regulations should include a list of programs or activities that meet the test and qualify under the exceptions.

A few commenters stated that the criteria were too strict and might prohibit many desirable programs and activities, such as extracurricular school activities. Another commenter stated the exception should permit age distinctions that are reasonably necessary to achieve any statutory objective or normal program operation.

Several commenters said the test was too broad or too general. As a result, all age distinctions could meet the test and agencies would have too much latitude in applying the test.

Response: HEW has retained the four part test in the final regulations. The word "and" has been added after parts (a)-(c) of the test to make clear that all four criteria must be met for the age distinction to qualify for an exception.

HEW believes the test will prohibit the use of age distinctions that violate the ADA and will permit the use of age distinctions that meet the requirements of the ADA. The test set out in § 90.14 is similar to the criteria which agencies have used successfully under the Age Discrimination in Employment Act to show exceptions for age distinctions which are bona fide occupational qualifications.

§ 90.14(a) *Age is used as a measure or approximation of other characteristics.*

Comment: A commenter stated there is an incorrect presumption in § 90.14(a) and (c) that the relationship between age and other characteristics is the same at both ends of the age continuum.

Response: HEW does not agree that this section makes the stated presumption. The only presumption made is that age may represent, in varying degrees, other characteristics in persons of all ages. Since the Act applies to persons of all ages, HEW believes it is neither necessary nor desirable to provide different standards for different age groups.

Comment: Several commenters suggested that the term "maturity" used as an example in this section be omitted or further defined. The reasons were that it is too vague a term or that age may be an indicator of physical maturity but not mental or emotional maturity.

Response: HEW agrees with the suggestion and has deleted the example. HEW does believe, however, that age may be, in some circumstances, a reasonable measure or approximation of characteristics reflecting either physical or emotional maturity.

Comment: A commenter said that the regulations should not limit the use of age to situations where it is used as a proxy only. A few other commenters stated that the term "proxy" should be defined and one suggested that the word "indicator" be used instead of "proxy".

Response: HEW has made no change in § 90.14(a). Where age is used by itself and does not represent another characteristic, that use of age would not pass the four-part test of § 90.14. The term "proxy" was not used in the text of the proposed regulations but only for discussion purposes in the preamble to the NPRM.

§ 90.14(b) *The other characteristic(s) must be measured or approximated.*

Comment: A few commenters suggested that the regulations should explain the meaning of the phrases "must be measured" and "necessary characteristic".

Response: HEW believes no change is necessary. A characteristic that "must be measured" is one that, if omitted from the program or activity, would significantly impair the normal operation or the achievement of a statutory objective. The phrase "necessary characteristic" does not appear in the text of the proposed regulations but was used for discussion purposes in the preamble to the NPRM. A necessary characteristic is one which meets the four part test. For example, age may be used as a measure of the likelihood of catching a communicable childhood disease. A program would be permitted to use age as a factor in identifying those persons to be vaccinated only if, in addition to the other requirements of the four part test, identification of individuals who are likely to get the disease is necessary in order to achieve a statutory objective of the program or to allow normal operation of the program.

§ 90.14(c) *The other characteristic can be reasonably measured or approximated by age.*

Comment: A commenter said that age should not be a proxy for adult characteristics. Several commenters said there must be a close relationship between age and the characteristic it represents because anything less is typically the basis for stereotyping or other discriminatory practices. A few commenters suggested the relationship should be mathematically, or statistically valid. A few other commenters suggested omitting the term "reasonable".

Response: HEW has not changed the final regulations. When age is used as a measure of one or more adult characteristics, the age distinction must still meet the remaining parts of the four part test. Implicit in the requirement that a characteristic be reasonably measured or approximated by the use of age, is the idea that there must be a close relationship between age and the characteristic being measured.

§ 90.14(d) *The other characteristics are difficult, costly, or otherwise impractical to measure directly.*

Comment: Several commenters stated that cost factors should never be used or should be used only if the other characteristics are impossible to measure. A few stated that if the other characteristic is so difficult or costly to determine it should not be an eligibility factor.

A few other commenters stated that, as an alternative, age be considered if direct measurement of the other characteristic is either impossible or so onerous to recipients or participants that it would impair the normal operation or achievement of any statutory objective.

Response: HEW has changed part four of the test to require that the characteristics for which age is an approximation must be impractical to measure directly on an individual basis. The references to cost and difficulty in measuring the factor have been deleted.

§ 90.14 *Exceptions for clubs or programs that have no basis in Federal statutes.*

Comment: A number of commenters said that the regulations either should provide a special or additional exception for, or should clarify how, senior citizens and other clubs may continue to apply an age criteria. Most said that a separate exception is needed in order for these types of programs to continue.

Suggestions for exempting or providing for the effective continuation of these age-related programs under the regulations included: permitting an exception for administrative action by any governmental level in developing and funding programs; provide a definition of "program" that allows an age-focused group to administer Federal funds as long as absolute age restrictions are not used in that portion of the program receiving Federal funds; permitting affirmative action that addresses the needs of various constituent groups.

A few commenters said that these organizations should either be prevented from using age criteria or be allowed to do so

only if they meet the exceptions stated in § 90.14.

Response: It is not HEW's intention to prohibit the existence of such age-focused groups as senior citizens clubs or Junior Chambers of Commerce. If the organization receives Federal financial assistance, however, the age distinctions used by these organizations must qualify under § 90.14 of the final regulations.

§ 90.15 *Exceptions to the rules against discrimination. Reasonable factors other than age.*

§ 90.15 *General comments about the exception.*

Comment: A few commenters suggested that the meaning of the phrase, "disproportionate effect" be explained or defined. Another commenter suggested that a list of examples be included to show how the exception applies.

Response: This phrase has an established meaning in other civil rights statutes, like Title VI of the Civil Rights Act of 1964. HEW intends the phrase to have a similar meaning in these regulations, i.e., to prohibit those actions which do not make use of express age distinctions, but which result in discrimination on the basis of age. This means, for example, that due to the recipient's use of a factor other than age which does not have a direct and substantial relationship to a statutory objective or to the normal operation of a program, persons of a certain age group do not receive services under the recipient's program in proportion to their needs for those services.

§ 90.15 *Rational for linking this exception to statutory objective/normal operation.*

Comment: A commenter stated that reasonable factors other than age need not bear any relationship to the normal operation of a program or to a statutory objective. The reason stated was that these terms are not used in Section 304(b)(1)(F) of the ADA, which is the basis for the exception provided under § 90.15. The commenter said that it is only necessary to show that the factors used are reasonable.

Response: HEW believes it is necessary to establish a standard for what may be considered reasonable factors other than age. If no standard is set, the interpretation of what is reasonable could be so broad and inclusive that few factors would be prohibited. If this were true, the Act would provide little protection against factors other than age used to discriminate against various age groups.

§ 90.15 *Relationship of factors other than age to statutory objective/normal operation.*

Comment: A number of commenters suggested that factors other than age must bear a rational relationship to a program's statutory objectives or normal operation. A rational relationship is less restrictive, permits greater flexibility in considering individual factors such as needs, and is consistent with the legislative history and reflects the language of the ADA. Several commenters said the use of a stricter standard would impose great hardship and would disrupt worthwhile programs.

A number of commenters stated that a stricter standard is needed. They stated that the rational standard is too subjective and is easily influenced by traditional modes of operation. It is too easy for a recipient to meet on the one hand, and too difficult for a plaintiff to overcome in proving a claim of discrimination on the other hand.

A few commenters stated that by deleting the term "unreasonable" from the purpose clause of the original ADA, Congress intended that any action, in order to qualify for an exemption, should be subject to strict scrutiny. A few commenters stated that since the use of age must be "necessary" to the normal operation or statutory objective, the use of factors other than age should also be "necessary."

Another commenter stated that there would be a discrepancy between § 90.14 and § 90.15 if the rational standard were used. While a program may be prevented from using an age distinction because the factor it represents is not necessary to its statutory objective, the factor itself may be used under § 90.15 if it is only rationally related to the statutory objective.

Another commenter stated that the ADEA contains a similar exception for the use of reasonable factors other than age. The regulations for the ADEA and court decisions made on this issue have successfully applied a standard of careful scrutiny.

Response: HEW has concluded that the relationship of factors other than age to the normal operation or statutory objective of a program must be a "direct and substantial" relationship. This relationship requires use of a standard of careful review and examination of uses of factors other than age on a case-by-case basis. The exception in § 90.15 for a factor other than age becomes an issue for resolution if raised in a complaint or in a compliance review.

To use a rational relationship or minimal scrutiny standard would leave open the possibility of purposefully circumventing the ADA by allowing administrators to use factors other than age to operate a program when an explicit use of age would be prohibited. HEW also believes that a minimal scrutiny standard would permit activities that should be prohibited. The use of that standard would make it very difficult to establish that an activity is in violation of the ADA. Therefore, HEW has adopted the "direct and substantial" test to define the relationship between "factors other than age" and the "normal operation" or "statutory objective" of a federally assisted program or activity.

§ 90.15 Cost-benefit considerations as justification for age-distinctions.

Comment: A number of commenters supported the NPRM position that a cost-benefit consideration by itself cannot be the justification for an exception under § 90.14 or § 90.15. Several commenters suggested factors to be considered in applying the tests, such as availability of adequate alternative services, relative equality of services in a given locale over a longer time period, effectiveness of program coordination at the local level, and the degree of necessity of limiting services based on extent of need and

resources available. A few commenters stated that examples of specific programs should be included in the ADA regulations to illustrate where cost-benefit considerations will be allowed.

A few commenters opposed any use of cost-benefit analysis because it is too difficult to quantify the benefits involved in human services and it is impossible to predict the benefits a person will derive from services.

Several commenters stated that the use of cost-benefit considerations is especially harmful to the elderly, and two commented that young people are even more vulnerable, being without political power. A few commenters stated that cost-benefit analysis should be specifically disallowed in the regulations.

Several commenters supported providing wider latitude for targeting programs based on cost-benefit considerations. They stated that programs with limited funds are unable to function without cost-benefit allocations and that program administrators should not be required to compose lengthy justifications for those allocations.

Response: The final regulations do not permit a cost-benefit consideration alone to justify an age distinction or a factor other than age. They allow the use of cost-benefit justifications for age distinctions or factors other than age only where those actions meet the tests of §§ 90.14-90.15. The tests of § 90.14 and § 90.15 should be sufficient to eliminate the misapplication of cost-benefit analysis.

§ 90.15 Services rendered under age-specific programs.

Comment: A number of commenters stated that the responsibility of a general program is not diminished by the existence of or referral to an age-specific program which provides the same service. Several commenters stated that the main thrust of the ADA is to make certain that the elderly receive their fair share of services, which requires full participation by both types of programs. Commenters cited several adverse effects of relieving a general program's obligation by using an age-specific program: separate and unequal treatment; overloading the age-specific program; and creating gaps of unserved populations.

Several commenters suggested that, to prevent duplication of services, a general program could be permitted to fulfill its obligations by referring people to a special program if: the general program could prove that the specific program's services were available; the general program used outreach to identify those ineligible for the specific program; the general program did not use more than its proportional share of funding as compared to the funding of the specific program; the general program did not deny services to anyone wishing to participate in its program.

Response: General programs may not restrict eligibility solely because of the existence of a similar age-targeted program if the result is a denial or limitation of services. A general program can focus its services by referring persons to existing age-targeted programs only if those actions do not result in a denial of services to the individual, or in the provision of lesser or different services. The

recipient operating a general program should establish procedures to insure that a person referred to an age-targeted program in fact receives service.

§ 90.18 Burden of proof.

Comment: Several commenters supported the position that the burden is on the recipient to prove whether an age distinction or other action falls within an exception. A few commenters disagreed. Commenters in favor of placing the burden of proof upon the recipient stated that only the recipient has sufficient program knowledge.

Another commenter stated that the burden should be on the recipient only after a charging party makes a reasonable showing of discrimination. A few commenters agreed that the recipient should have the burden when the complaint concerns advancing age, but that the burden should shift to the complainant when he or she is denied the benefits of the program because he or she is too young.

Response: The final regulations continue to require that the recipient has the burden of proving that an age distinction or other action used in its program qualifies for one of the statutory exceptions.

HEW believes that the recipient is best able to demonstrate that an age distinction or factor other than age is entitled to an exception under § 90.14 or § 90.15. The recipient (rather than the complainant) is the party most knowledgeable about its program or activity, the normal operation of the program or activity, and any statutory objective governing the program or activity.

Subpart C—What Are the Responsibilities of the Federal Agencies?

§ 90.31 Issuance of regulations.

§ 90.31(d) HEW approval of other agency regulations.

Comment: A number of commenters supported the ADA's requirement that HEW review and approve the specific regulations issued by co-equal Federal agencies because this review will ensure that all agency regulations are consistent with both the ADA and the general regulations. Several commenters opposed a review role for HEW because HEW lacks sufficient knowledge of other agency programs to review their regulations effectively. Another commenter suggested the HEW seek clarification of its evaluation role from Congress.

Response: Under Section 304(a)(4) of the ADA, HEW is required to approve all agency age discrimination regulations. The final regulations have been changed to make clear that the regulations of each agency must be submitted to HEW and may not be published in final form until approved by the Secretary.

§ 90.31 Mechanics and timetable for HEW review of other agency regulations.

Comment: A few commenters suggested that interagency teams be established to assist HEW in reviewing regulations of other agencies. Several commenters expressed concern that the mechanics and the timetable for the review process are unclear and noted that there is insufficient time allowed in § 90.31 of the NPRM for HEW to complete the

review and approval of other agency regulations required by the ADA.

Response: HEW has involved in the development of these regulations an Interagency Task Force composed of those agencies affected by the ADA. This Task Force will continue to function during the development of specific regulations by each agency. The final regulations have been revised to require that each agency submit its final regulations to HEW at the end of 120 days for review and approval. An agency's final regulations may not be published until approved by the Secretary.

§ 90.32(f) Appendix listing age distinctions.

Comment: Several commenters suggested that the appendix containing existing age distinctions be published together with the agency's proposed regulations so that the public has an opportunity to comment on existing age distinctions as well as on the regulations proposed.

Response: For information purposes, HEW requires each Federal agency to publish, together with its final regulations, a list of age distinctions found in statutes and regulations. During the 12 months following the publication of its final regulations and appendix listing age distinctions, each agency is further required to review and evaluate against the tests and criteria outlined in §§ 90.13 and 90.14 all the agency's existing and proposed age distinctions. At the end of 12 months, each agency must publish in the Federal Register a report of this review indicating for each age distinction: (1) its elimination, or (2) a justification for its retention in agency regulations or, if not contained in regulations, its proposed adoption in regulation form.

§ 90.32 Review of agency policies and administrative practices.

§ 90.32 (a) and (b) Twelve month review.

Comment: A few commenters suggested that HEW be the sole agency responsible for evaluating the appropriateness of any age distinctions proposed by other agencies in their 12 month reviews, prior to the adoption of those age distinctions by regulations. A few other commenters suggested that HEW outline in the general regulations criteria for judging whether an agency may continue an age distinction so that these criteria are available to other agencies as they assess their age distinctions.

Response: HEW does not have the necessary knowledge of other agencies' programs to determine whether specific age distinctions are or are not appropriate. Agencies must justify the age distinctions used in their programs as lawful under the Act and these final regulations. HEW believes each agency is in the best position to assess which of its age distinctions should be retained or eliminated. The publication of each agency's assessment of its age distinctions and the accompanying opportunity for public comment on that assessment should provide information useful to agencies in reviewing their age distinctions. HEW will comment, where appropriate, on those distinctions during that public comment process.

§ 90.32(c) Adopting age distinctions through regulations.

Comment: Several commenters supported the position that only Congress has the authority to create age distinctions. These commenters opposed the adoption of age distinctions through agency regulations.

Response: Congress, through the ADA, has prohibited the use of age distinctions, with certain specific legislative exceptions. These exceptions permit age distinctions to be imposed not only through Congressional action, but also by way of agency regulations, policies and guidelines. HEW has required that in the case of federally imposed age distinctions, agencies must adopt those age distinctions by regulation under the Administrative Procedure Act (APA). In doing so, agencies must use the notice and comment procedure specified in 5 U.S.C. 553 of the APA.

§ 90.33 Interagency cooperation.

Comment: The commenters supported interagency cooperation for those recipients receiving funds from more than one Federal agency. They stated cooperation would eliminate duplication of enforcement procedures and reporting requirements. Commenters noted that the problem of duplication was particularly acute for State agencies, counties, and local governments receiving funds from a number of Federal agencies.

A number of commenters suggested that HEW be responsible for developing uniform government-wide procedures for complaint processing, compliance investigations, and enforcement proceedings. One suggested that given HEW's authority to review regulations, HEW should also act as a clearinghouse to review government-wide procedures.

Some commenters questioned what constitutes a "class of recipients," asking whether State agencies, counties or local governments would be considered a "class" for the purpose of designating a lead agency, and whether senior citizens could be considered a "class." [If so, would an Area Agency on Aging be an appropriate lead agency for that class?] Several commenters stated that criteria need to be established for designating the lead agency responsible for each class of recipients.

Response: HEW has revised this section of the regulations to provide further guidance in the setting up of a system of interagency cooperation. The revised § 90.33 provides that where two or more agencies provide Federal financial assistance to a recipient, the Secretary may designate one of the agencies as the sole agency for all compliance and enforcement purposes with respect to those recipients, except for ordering the termination of funds and the notification of appropriate committees of Congress.

§ 90.34 Agency reports.

Comment: Many commenters favored the targeted approach to data collection proposed by HEW because it minimizes the paper-work burden. Others supported a targeted approach but questioned what criteria would be used to select the data for targeting and collection. Some commenters

opposed the targeted approach. They believe it will not provide sufficient information to meet the Act's reporting requirements because program participation and service population data are necessary to track age discrimination.

Some commenters opposed relying exclusively on complaints to satisfy the ADA data requirements because complaints may not reflect accurately the extent of age discrimination. Other commenters supported the use of complaints as part of a targeted data collection approach because complaints may help identify programs in which discriminatory practices are occurring.

Response: HEW believes that targeting is the most effective way to satisfy the ADA's reporting requirements without increasing the burden on recipients. The targeted approach does not rely exclusively on tracking complaints but recognizes that complaint data have been useful in uncovering patterns of discrimination in other civil rights statutes. In all cases, each agency should seek data that appear to be most useful in identifying age discrimination and that will impose the least burden on recipients.

§ 90.34(e) Data requirements.

Comment: Some commenters suggested deleting the data requirement in § 90.34(e) because it permits HEW to require potentially unlimited additional data without giving agencies fair notice of what data they will be expected to collect.

Response: This section remains unchanged. Under the ADA it is HEW's responsibility to review the performance of each agency in complying with the ADA. HEW is committed to exercising this responsibility in the least burdensome way while retaining the flexibility to require the data necessary to fulfill that responsibility.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 90.43 What responsibilities do recipients and agencies have specifically to ensure compliance with the act?

§ 90.43(b)(3) [renumbered § 90.43(a)(3)] Providing information to beneficiaries.

Comment: Several commenters said that the regulations should place more emphasis on informing citizens of their rights under the Act.

Response: HEW has made no change. The regulations require that each agency make available educational materials on the rights and obligations of beneficiaries and recipients. Agencies are free to use whatever methods they deem appropriate to accomplish this.

§ 90.43(c) [renumbered § 90.43(b)] Self-evaluation generally.

Comment: Several commenters stated that all self-evaluations should be subjected to a review, either by the specific funding agency or by an objective third party. Other commenters suggested that the funding agency spot check recipients' self-evaluations for compliance purposes. Generally commenters stated that self-evaluations alone would be insufficient to meet the ADA reporting requirements.

Several commenters expressed a need for guidelines for self-evaluations, and suggested the development of uniform guidelines for all Federal recipients. Most commenters urged the importance of keeping the self-evaluation simple while a few supported a broader examination of recipients' policies and practices. A few commenters suggested that recipients seek assistance in completing their self-evaluations from young people and the elderly.

Response: HEW believes that the primary purpose of the self-evaluation is internal review by the recipient. The self-evaluation process is not intended to yield sufficient information to satisfy the ADA reporting requirements. However, funding agencies will be able to review recipient self-evaluations where they might provide useful information. HEW plans to issue self-evaluation guidelines for HEW recipients after the publication of HEW specific regulations. Other agencies may choose to use HEW's guidelines as a model. The self-evaluations are intended to be simple and straightforward, with each age distinction capable of being analyzed in a page or less. HEW's position is that agency regulations should avoid imposing conflicting requirements on recipients. Although the general regulation is silent on the question of public participation in the self-evaluation process, agencies have discretion to provide in their regulations for public participation in recipient self-evaluations.

§ 90.43(c) [renumbered § 90.43(b)] Self-evaluation timetable and application.

Comment: Most commenters stated that 18 months is an appropriate time for recipients to complete their self-evaluations. Some commenters stated that 18 months is too long and suggested that Federal agencies be required to review their age distinctions within six months after publication of their final regulations (rather than the 12 months allowed under § 90.32 of the proposed regulations). Recipients would then be required to complete their self-evaluations six months later, or one year from publication of the agency's final regulations.

Several commenters stated that restricting self-evaluations to recipients with 15 or more employees is reasonable. A few suggested including recipients with fewer than 15 employees. Some commenters stated that requiring self-evaluations from recipients with as few as 15 employees is unreasonable; cutoffs of 50, 100 or 500 were suggested. Alternative bases suggested for self-evaluations were the amount of funding received, or the number of people served by the recipient.

Response: HEW has retained the 18 month self-evaluation period because the Federal agencies need a year to analyze and review the age distinctions imposed in their programs through statutes and administrative actions. HEW expects recipients to use the information in these Federal agency reviews in their self-evaluations.

HEW has retained a cut-off based on the equivalent of 15 or more employees in the ADA self-evaluation requirement because it is consistent with self-evaluation requirements in other civil rights statutes and

regulations. In addition, HEW has determined that it would be impractical to use the number of people served, or the amount of Federal financial assistance received, as a basis for requiring recipients to perform the one-time self-evaluation.

§ 90.43(d)(1)(i) [renumbered § 90.43(c)(1)(i)] Complaints by organizations or groups.

Comment: A few commenters suggested that the complaint procedure specifically cover group complaints. They defined group complaints as complaints by an organization representing older persons; e.g. on behalf of one or more individuals. Inclusion of this type of complaint would permit advocates for older persons to assert rights on behalf of many individuals who would be reluctant to do so on their own.

Response: The regulations do not prohibit this kind of complaint. A complaint may be made by an individual, a class, or by an organization on behalf of its members or on behalf of other persons.

§ 90.43(d)(1)(ii) [renumbered § 90.43(c)(1)(ii)] Agency screening of complaints prior to mediation.

Comment: Several commenters stated that there should be an investigation prior to assigning the dispute to a mediator. Frivolous complaints could be eliminated by this process and many legitimate complaints could be settled without progressing to a more formal procedure. Several commenters said that this investigation period should be 60 days in length. A few commenters expressed similar concerns but stated only that HEW should clarify the steps for initiating mediation and provide more information regarding the initial stages of the process.

Response: HEW believes that the present screening process is the most effective possible without resorting to immediate investigation, which would be time consuming and duplicative. Each agency will screen complaints for those programs it administers which receive Federal financial assistance. Screening will eliminate complaints about actions which are not covered by the ADA, and thereby reduce the number of groundless complaints which might otherwise go forward in the process.

§ 90.43(d)(2) [renumbered § 90.43(c)(2)] Length of time for the complaint process.

Comment: Many commenters were concerned with the length of time that was involved to process a complaint. Several commenters stated that specific time lines were needed for each step in the complaint procedure. Other commenters stressed that even a few months was too long a time, for the elderly to wait for complaint resolution.

Response: HEW is aware of the damaging effect of long drawn out complaint resolution procedures. It has adopted mediation and an informal investigation step as part of the complaint resolution process in an attempt to improve the responsiveness of that process. However, HEW has decided not to impose government-wide timeframes for every step of the complaint process. This is a drastic step to take in advance of any specific indication that there will be unusual

problems of delay. Accordingly, no additional timeframes have been placed in the regulations.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] Mediation—mandatory mediation.

Comment: A number of commenters discussed the proposal to make mediation a mandatory step in the complaint process. Several commenters supported mandatory mediation; a few stated that mediation should be made mandatory only after a successful trial period. Several other commenters stated that mediation should not be a mandatory step. Those opposing mandatory mediation through age discrimination should not be subject to such a broad experiment that might diminish the effectiveness of the ADA.

Response: HEW believes that making the mediation process voluntary is not a reliable way of testing its effectiveness. The need to get away from the traditional problems of complaint backlogs in civil rights enforcement requires us to carry out this effort. HEW has instead sought to rely on other safeguards such as the presence of a trained Federal mediator, the 60-day time limit, the policy of mediator confidentiality, the informality of the process and continuous monitoring of the process to insure that mediation is effective.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] Mediation: Effectiveness of the mediation process.

Comment: A large number of commenters addressed the issue of the effectiveness of the mediation process. While many commenters thought the process would be quick and effective in resolving complaints, others cited problems regarding possible harm to or discouragement of complainants which could make the process ineffective.

The major problems cited were:

(1) Complainants would be discouraged or intimidated from seeking their full rights through the formal administrative process;

(2) Mediation would impose a burden of expense upon the parties to the complaint, including travel expenses to the mediation site;

(3) Complainants might desire legal assistance but would be unable to afford the expense;

(4) Mediation would not always be appropriate for a complaint; and

(5) Mediation would impose another layer on the complaint process thereby delaying relief to the complainant.

Response: HEW has tried to structure the mediation process to protect the complainant and insure that valid complaints are pursued and successfully resolved.

The mediation will be conducted by a specially trained mediator who will explain the procedure to both parties. A complainant who does not believe that he is obtaining full satisfaction through mediation need not agree to a settlement. A complainant will have to wait no more than 60 days for the agency enforcement process to begin. This 60 days will count as part of the 180 day period which the agency has to resolve the complaint before a court action can be filed by the complainant.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the mediator's services will be paid for by the Federal government. The mediation process is designed to allow a party to participate in mediation without resort to an attorney and without having to build a formal legal case. Experience with other processes similar to the proposed mediation system suggest that the expense to the parties will not be significant.

These concerns about the effectiveness of the mediation process will be carefully monitored, as part of the 30 month evaluation of the use of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)]
Should mediation be conducted by a single mediation agency or by each Federal agency subject to the ADA?

Comment: A majority of the commenters favored having a single agency manage all mediation under the ADA rather than having agencies develop their own mediation capabilities.

Response: The final regulations provide that the Secretary shall designate one agency to be responsible for administering a centralized mediation process for all age discrimination complaints. A single agency insures uniform policy and practices, efficiency and centralized accountability for purposes of monitoring and evaluation. In the early stages of implementing the ADA, it would be particularly inefficient to have each Federal agency develop its own separate mediation capability.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)] *Use of the Federal Mediation and Conciliation Service (FMCS).*

Comment: Most commenters supported using the FMCS to coordinate the mediation process. A few favored using a private mediation agency. Many commenters favored the use of private individuals as mediators at the local level rather than FMCS staff mediators. Some Federal agency commenters expressed a desire for additional information regarding the procedures to be used in managing the national mediation system.

Response: HEW has designated the FMCS to coordinate the mediation of ADA complaints. As is the case with every other aspect of mediation, the results of this decision will be closely monitored and evaluated as part of the 30-month review of these regulations. The FMCS is the only Federal government agency with extensive expertise in mediation. The Service has a national staff of more than 300 experienced full-time mediators located in field offices around the country.

As currently planned, mediators will be drawn from both the professional staff of FMCS and from among private citizens experienced in resolving community disputes, who will be trained by the FMCS. HEW and the FMCS intend to work closely with other Federal agencies to implement mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)]
Availability of qualified mediators.

Comment: A number of commenters raised problems about obtaining mediators. A

commenter stated that all parties should be allowed to approve or disapprove the mediator. Several commenters stated that older persons who are familiar with the problems of the elderly should be trained as mediators. This group would not be limited to mediating complaints of the elderly.

Several commenters stated that although mediation has been used in labor-management disputes, different methods would be required to deal with age discrimination. The mediator should have knowledge of age discrimination in program services and knowledge of alternatives available in the delivery of services. The different requirements in mediating discrimination complaints might require development of a corps of Federal program specialists trained in mediation.

Response: Mediation is proving useful in resolving a wide variety of disputes outside the traditional labor-management area. Mediators will be selected by the FMCS in order to insure their neutrality. All mediators selected to resolve age discrimination complaints will receive thorough training in the ADA and applicable regulations. Moreover, mediators will be drawn from both FMCS staff and from private citizens who have experience in resolving community disputes.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)]
Length of the mediation trial period.

Comment: A number of commenters stated that mediation should be used only on an experimental basis. Some suggested limiting the mediation experiment to geographic regions or Federal agencies. Several commenters stated that the trial period should be 30 months; a few others suggested 12, 15, 18 or 24 months.

Response: HEW is aware that the use of mediation to resolve complaints on this scale is highly innovative. Accordingly, close monitoring and evaluation are planned. However, the likelihood of success appears high enough, and the problems of traditional methods are serious enough, that mediation will be attempted nationwide rather than as a regional demonstration project.

The final regulations continue to provide for a review of the mediation experiment 30 months after these regulations are published. No complaint of age discrimination can be processed until final agency regulations are effective. Therefore, mediation will not begin until late 1979. As a result, the 30 month review will report on approximately two years of mediation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)]
Confidentiality of mediation.

Comment: Some commenters were concerned with the adequacy of confidentiality protections in the mediation process. A few others suggested that reports of mediated settlements should have restricted availability.

Response: The confidentiality provision of the regulations has been changed to deal exclusively with the protection of the neutrality of the mediator and the public interest in the success of the mediation process. The parties must be able to speak freely in the mediation without fear that the

mediator will testify or provide information in a later enforcement proceeding. The parties must not be bound in subsequent administrative or court proceedings by the statements made in mediation. The terms of any settlement agreed to in mediation will be sent to the agency which received the complaint originally.

§ 90.43(d) [renumbered § 90.43(c)]
Mediation of multiple jurisdiction complaints.

Comment: A few commenters were concerned about how agencies would handle complaints that involved charges of multiple types of discrimination (e.g., age and race). They were concerned about the usefulness of mediation with this type of complaint. A few commenters stated that in such complaints, each charge of discrimination should be processed individually.

Response: The potential problem with the multiple complaint is that the ADA mediation procedure is not required in other civil rights areas. HEW expects that agencies will be able to separately mediate the age element of a complaint. A successful mediation might also resolve all the issues which gave rise to the dispute in the first instance. If a successful mediation failed to do this or mediation was unsuccessful, the agency could further process the complaint following its normal procedures for handling multiple jurisdiction complaints.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)]
Initial efforts to resolve complaints.

Comment: Several commenters were concerned that a mediation process would preclude initial efforts to informally resolve complaints.

Response: Nothing in the regulations prohibits informal resolutions between parties. However, once a formal complaint has been filed, the Federal agency has a responsibility to become involved in the process. The mediation procedure is an attempt to achieve informal resolution of complaints and to avoid lengthy and costly litigation.

§ 90.43(d)(3) [renumbered § 90.43(c)(3)(iii)]
Mediation time limits.

Comments: Several commenters addressed the issue of the length of time which should be allowed for mediation. Some stated that the period for mediation should be 60 days; others recommended 30 days; 90 days or 120 days.

Response: HEW has changed the final regulations to allow a maximum of 60 days for mediation. The 60 day period begins as soon as the complaint is received by the Federal agency. The mediator has been given authority to terminate mediation early if it appears no agreement can be reached. The 60 day period leaves at least 120 days for agencies to investigate an unresolved complaint before the expiration of the 180 day time limit for exhaustion of administrative remedies. Because the mediation period is part of the 180 day time limit, a short mediation period is important if complaints are going to be resolved administratively rather than in court.

§ 90.44(a) Compliance reviews.

Comments: Several commenters supported a requirement for mandatory compliance reviews. A few other commenters supported the retention of a requirement for optional compliance reviews.

Response: Compliance reviews will be conducted at the option of the agency. HEW has modified the regulations to require that every agency include in its regulations a provision that it may conduct compliance reviews if the need should arise, regardless of the size of the agency or its programs.

§ 90.45 [renumbered § 90.45 and § 90.46] Information requirements and prohibition against intimidation or retaliation.

Comment: A commenter recommended that HEW set minimum record keeping requirements and specify a length of time for retention of records by recipients.

Response: HEW has specified only general data provisions and record keeping requirements because it is almost impossible to achieve the desired level of detail in general regulations. As a matter of policy, HEW is committed to minimizing record keeping requirements whenever possible by avoiding duplicative and unnecessary requirements. A time limit for record retention may be considered if specific record keeping requirements are implemented in the future.

§ 90.45 Information requirements—assurances of compliance.

Comment: Some commenters suggested that the regulations should require recipients to submit assurances of compliance with the ADA, similar to those required under other civil rights statutes.

Response: The regulations remain unchanged. There is no requirement in these regulations that each recipient submit a general assurance of compliance with the ADA. However, even without an assurance of compliance, the legal obligation of a recipient remains unchanged. HEW wishes to avoid imposing any unnecessary burden on recipients with respect to the compliance and enforcement procedures and accordingly has decided not to require assurances of compliance with the ADA.

§ 90.46 [renumbered § 90.47] What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the act has been committed?**§ 90.46(d)(1) [renumbered § 90.47(d)(1)] Deferral of funds.**

Comment: A commenter recommended that the deferral of funds apply only to the program area where non-compliance is found.

Response: Deferral precedes any final finding of non-compliance through an administrative hearing. The enforcing agency must have discretion to defer Federal financial assistance in any program affected by the agency's preliminary findings. There would be no basis for deferring any other Federal financial assistance. Accordingly, it is not necessary to make any change in the regulations.

§ 90.47 [renumbered § 90.48] Alternate funds disbursement procedure.

Comment: A commenter suggested that the regulations further clarify the process of selecting the alternate recipient when a recipient's funds have been terminated for noncompliance with the ADA. The question was asked "Should the alternate recipient have to satisfy the requirements of the grant statute?"

Response: The regulations permit an agency to disburse withheld funds to an appropriate alternate recipient. The recipient must demonstrate the ability both to achieve the goals of the Federal statute authorizing the program or activity and to comply with the agency's regulations issued under the ADA. Each Federal agency is authorized and required to publish its own regulations implementing this process for its programs. These regulations may consider all relevant factors to determine if the required ability has been demonstrated. HEW believes that any amplification on this process should be made in each agency's own regulations consistent with the relevant requirements of the ADA.

§ 90.50 Exhaustion of administrative remedies.

Comment: A few commenters stated that the time period of 180 days before civil action may commence should be reduced to 90 or 120 days. A major reason cited in support of a reduced period was that six months is too long for the elderly to wait.

Response: The period of 180 days is expressly required by the Age Discrimination Act and accordingly cannot be changed by the regulations.

Subpart E—Future Review of Age Discrimination Regulations**§ 90.81 and § 90.82 Review of General and Agency Regulations.**

Comment: A few commenters stated that 30 months is too long a time to wait for a review of the regulations. Some commenters stated that 30 months is an adequate time but another commenter suggested that waiting longer than 30 months would be wiser.

Response: HEW intends to wait 30 months before asking for public comment on the effectiveness of these regulations. The 30 month time period was selected because use of a 30 month period will enable HEW to have information from at least one complete cycle of complaints, mediation, data collection and report preparation and time to analyze that information.

[FR Doc. 79-18104 Filed 6-11-79; 6:45 am]

BILLING CODE 4110-12-01

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE****Age Discrimination Regulations;
Designation of Mediation Agency**

The Secretary of Health, Education, and Welfare hereby designates the Federal Mediation and Conciliation Service as the agency to manage the mediation activities required under the age discrimination regulations issued by the Department set forth in 45 CFR Part 90 to implement the Age Discrimination Act of 1975.

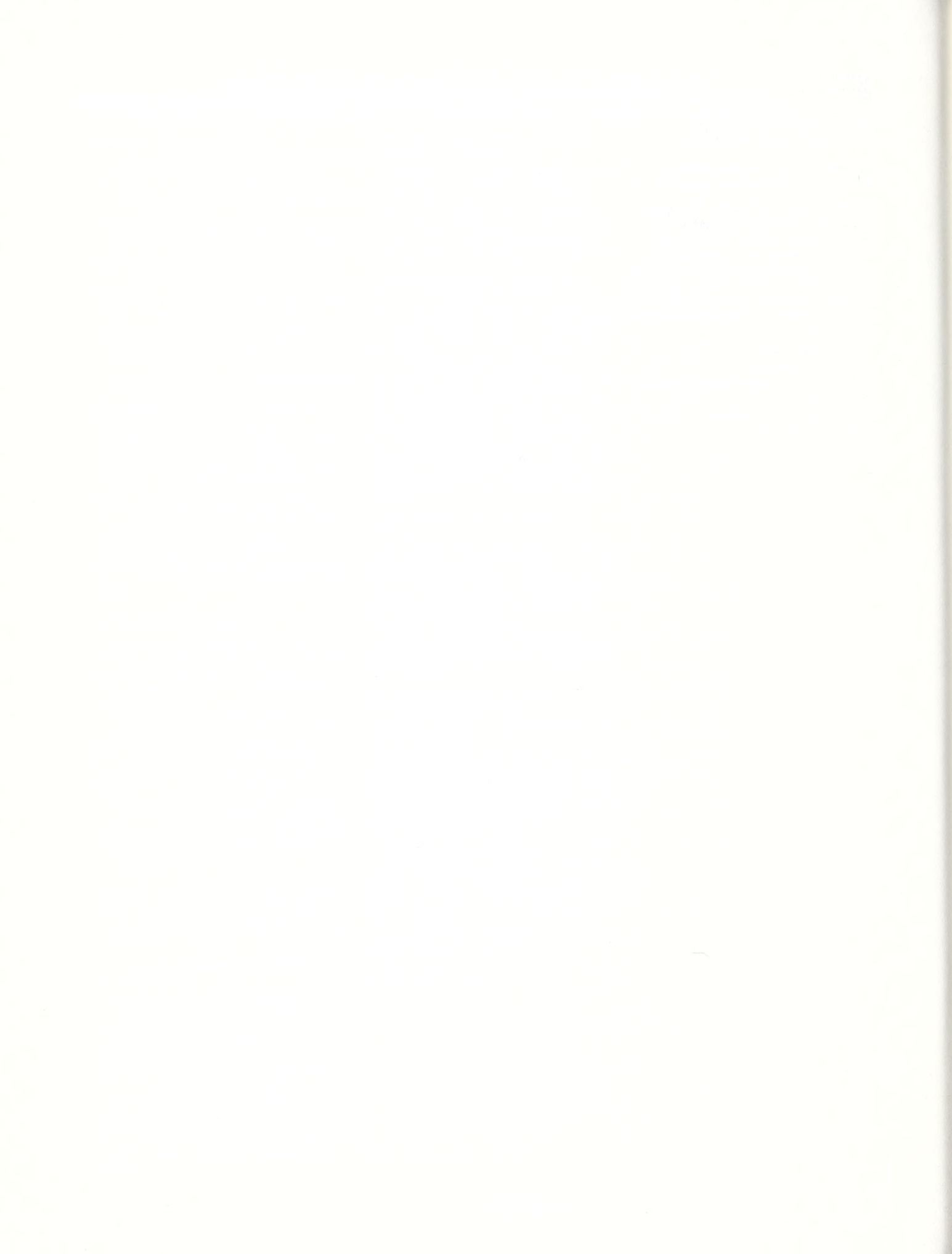
Dated: June 5, 1979.

Joseph A. Califano, Jr.,

*Secretary, Department of Health, Education,
and Welfare.*

{PK Doc. 79-18103 } Fed R-11-79: 8 45 am }

BILLING CODE 4110-12-M



VIII. FmHA INSTRUCTION 1901-E

TITLE 7 - AGRICULTURE

CHAPTER XVIII - FARMERS HOME ADMINISTRATION, DEPARTMENT
OF AGRICULTURE

SUBCHAPTER H - GENERAL

PART 1901 - PROGRAM-RELATED INSTRUCTIONS

SUBPART E - CIVIL RIGHTS COMPLIANCE REQUIREMENTS *C*

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Exhibit E - List of Regional Offices, Office of Federal Contract
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Authorities: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301;
42 U.S.C. 2942; Sec. 10 P.L. 93-357. 88 Stat 392 delegation of authority
by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst.
Sec. for Rural Development, 7 CFR 2.70; delegations of authority by
Dir., OEO, 29 FR 14764, 33 FR 9850.

PART 1901 - PROGRAM RELATED INSTRUCTIONS

Subpart E - Civil Rights Compliance Requirements *C*

§1901.201 Purpose.

This subpart contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration (FmHA). Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

§1901.202 Nondiscrimination in FmHA Programs.

(a) Nondiscrimination by recipients of FmHA assistance.

(1) No recipient of FmHA financial assistance will directly or through contractual or other arrangements subject any person or cause any person to be subjected to discrimination on the ground of race, color, or national origin, with respect to any program or facility. This prohibition applies but is not restricted to unequal treatment in priority, quality, quantity, methods, or charges for service, use, occupancy or benefit, participation in the service or benefit available, or in the use, occupancy or benefit of any structure, facility, or improvement provided with FmHA financial assistance.

(2) Specifically, and without limiting the general applicability of this subpart, such recipient will not on the grounds of race, color, or national origin:

(i) Deny any person the use, occupancy, or enjoyment of the whole or any part of real or personal property or service, financial aid, or other benefit under any program or facility.

(ii) Provide any person with any service, use, occupancy, or other benefit different from that provided others by the program or facility.

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(iii) Subject any person to segregation or separate treatment in any matter related to his or her receipt of any service or other benefit.

(iv) Restrict in any way any person's enjoyment of any right, privilege, or advantage enjoyed by others through the facility or activity.

(v) Treat any person differently from others in determining whether he or she satisfies any requirements or conditions for any admission or membership in the recipient or in any other organization.

(vi) Deny any person an opportunity or restrict opportunity to participate in a program or facility by:

(A) Refusing or failing to provide notice or services provided others for the purpose of encouraging participation in the program or facility; or

(B) Providing any person with such notice or services different from the notice or services provided others.

(vii) Utilize criteria or methods of administration that have the effect of subjecting a person to discrimination with respect to any program or facility or defeating or substantially impairing the achievement of the objectives of a program or facility.

(viii) Select sites or locate facilities with the purpose or effect of:

(A) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which the regulations in this subpart apply; or

(b) Defeating or substantially impairing the achievement of the objectives of the regulations in this subpart.

(ix) Continue any previous or existing discriminatory practices, but will take affirmative action to overcome the effects of such discrimination.

(x) Deny any person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) Nondiscrimination by FmHA employees.

(1) No FmHA employee will exclude from participation in, or deny the benefits of, any program or activity administered by FmHA, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, national origin, or marital status.

(2) No FmHA employee will:

(i) Be limited in the discharge of his or her responsibilities to working with applicants solely on the basis of race, color, religion, sex, national origin, or marital status.

(ii) Obstruct equal access to buildings, facilities, structures, or lands under the control of FmHA.

(iii) Deny under any program or activity of FmHA equal opportunity for employment; for participation in meetings demonstrations, training activities or programs; for receiving awards; for receipt of information disseminated by publication, news, radio, and other media; for obtaining contracts, grants, loans or other financial assistance, or for selection to assist in the administration of programs or activities of FmHA.

(3) No FmHA employee will, while conducting official business, participate in or attend any segregated meetings or meetings held in a segregated facility from which persons are excluded because of race, color, religion, sex, national origin, or marital status.

(c) Intimidating or retaliatory acts. No recipient or other person will intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege under this subpart, or because a person has made a complaint or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a complaint. The identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of this subpart.

(d) Nondiscrimination Agreement. The County Supervisor will, at the time FmHA assistance is requested, give all applicants for loans and grants listed in §1901.204 (a) a copy of Form FmHA 400-4, "Nondiscrimination Agreement," and inform the applicant that assistance will be conditioned upon executing this form and complying with the requirements of this subpart.

(e) Covenants. Each instrument of conveyance for loans subject to Title VI of the Civil Rights Act of 1964, as outlined in §1901.204, must contain the following covenant:

"The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

(f) Posters. The nondiscrimination poster, "And Justice For All," will be displayed at the facilities and/or office of any borrower or grantee if the facilities have been financed by an FmHA loan or grant and are subject to Title VI of the Civil Rights Act of 1964. This poster also will be displayed in all FmHA State and County Offices.

(g) Racial and ethnic data. Recipients should maintain, for review by FmHA and other appropriate agencies, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of FmHA-assisted programs. The data should identify recipients as White, Negro or Black, American Indian, Spanish Surname, Oriental and Other.

(h) Discrimination complaints.

(1) Any person or any specific class of persons, if they believe they have been subject to discrimination prohibited by this subpart, may file a written complaint with any FmHA office, or, if they prefer with the Secretary of Agriculture. Persons who complain of discrimination will be advised of their rights to file complaints. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary of Agriculture.

(2) A complaint filed with the County Supervisor or the State Director will be referred promptly to the Administrator,

Attention: Equal Opportunity Officer. Attached to the complaint should be a statement by the County Supervisor or State Director identifying the recipient and type of assistance provided by FmHA, indicating whether a nondiscrimination agreement has been signed, and giving any other available pertinent information about the complaint.

§1901.203 Title VIII of the Civil Rights Act of 1968.

FmHA employees, FmHA borrowers, contractors, packagers, and others who provide housing for sale or rent, are obligated under the provisions of Title VIII of the Civil Rights Act of 1968 to provide fair housing to all persons regardless of race, color, religion, or national origin.

(a) Coverage. The prohibitions against discrimination in the sale, rental, or financing of housing contained in Title VIII apply to:

- (1) All dwellings financed by loans made by the Federal Government and, therefore, to all RH borrowers.
- (2) Any person in the business of selling or renting dwellings defined as:
 - (i) The owner of a dwelling intended for occupancy by five or more families.
 - (ii) Any person who has participated as principal in the sale or rental of three or more dwellings in the past year.
 - (iii) Any person who has served as sale or rental agent in two or more transactions in the past year.

(b) Discrimination acts prohibited. Title VIII prohibits FmHA employees, multiple housing borrowers, and those with whom FmHA does business (contractors, real estate brokers, packagers) from:

- (1) Refusing to sell or rent a particular dwelling because of a person's race, color, religion, or national origin. The following actions constitute violations of this provision:
 - (i) Refusing to package an RH loan application.

(ii) Refusing or failing to show a particular dwelling or home in a particular subdivision.

(iii) Directing persons only to areas populated by those of similar race, color, religion, or national origin when housing is available in other areas.

(iv) Representing unsold dwellings or sites as sold to prospective buyers.

(2) Requiring applicants for services to meet different terms or conditions because of their race, color, religion, or national origin; for example, requiring larger rents or downpayments from minority applicants.

(3) Including in any advertising either directly or through visual representation a preference for applicants of a particular race or ethnic origin.

(i) Words indicative of the race or ethnic background of the dwelling or landlord such as "White private home," or "all Black subdivision," may not be used in advertising housing financed or to be financed by FmHA.

(ii) Selection of advertising media and the areas to be covered by any advertising must be made to reach potential applicants of all races or ethnic origins.

(c) FmHA affirmative action.

(1) It is the policy of the Farmers Home Administration to administer its housing program affirmatively so individuals of similar income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, or national origin. Each participant in an FmHA housing program shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions. (Revised 9-7-77 PN 586.)

(2) The affirmative fair housing marketing requirements shall apply as follows: (Revised 9-7-77 PN 586.)

(1) Participants in FmHA housing programs who request approval for subdivision development involving five or more sites, multiple-family projects with five or more units including self-help technical assistance grantees assisting five or more families or five or more conditional commitments for single family dwelling units during a 12-month period must submit an affirmative marketing plan.
(Revised 9-7-77 PN 586.)

(11) An affirmative fair housing marketing plan is required to be prepared and submitted to FmHA by the contractor when:
(Revised 7-8-85, SPECIAL PN.)

(A) A real estate broker is offering 5 or more single-family dwellings located in the same subdivision for sale under an exclusive listing contract with FmHA. (Added 7-8-85, SPECIAL PN.)

(B) An auctioneer under contract with FmHA is offering 5 or more single-family dwellings located in the same subdivision for sale by public auction. (Added 7-8-85, SPECIAL PN.)

(C) A contractor under a contract with FmHA is managing a multiple-family housing project of 5 or more units or 5 or more single-family dwellings located in the same subdivision. (Added 7-8-85, SPECIAL PN.)

(3) Affirmative fair housing marketing plans will be submitted on Form HUD 935.2(3-76) or the participant must be a signatory to a voluntary affirmative marketing agreement approved by the Department of Housing and Urban Development. The plan, if submitted on Form HUD 935.2(3-76), shall describe an affirmative program which will meet the following requirements:
(Revised 9-7-77 PN 586.)

(i) Reaching those prospective buyers or tenants, regardless of sex, of majority and minority groups in the marketing area who traditionally would not be expected to apply for such housing without special outreach efforts because of existing racial or socio-economic patterns. (Added 9-7-77 PN 586.)

(ii) Undertaking and/or maintaining a nondiscriminatory hiring policy in recruiting from both majority and minority groups including both sexes, for staff engaged in the sale or rental of properties. (Added 9-7-77 PN 586.)

(iii) Training and instructing employees engaged in the sale or rental of properties in the policy and application of nondiscrimination and fair housing. (Added 9-7-77 PN 586.)

- (iv) Displaying in all sales and rental offices the "Fair Housing" poster. (Added 9-7-77 PN 586.)
 - (v) Posting in a conspicuous position on each property and FmHA construction site a sign displaying the equal opportunity logo or the following statement: "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin." (Added 9-7-77 PN 586.)
 - (vi) Undertaking efforts to publicize the availability of housing opportunities to minority persons through the type of media customarily used by the applicant or participant, including minority publications and other minority outlets available in the housing market area. As part of these efforts all advertising must include either the equal housing opportunity logo or statement. When illustrations or persons are included they shall depict persons of both sexes and of majority and minority groups. (Added 9-7-77 PN 586.)
- (4) The affirmative fair housing marketing plans or evidence that the participant is covered by an approved voluntary affirmative marketing agreement must be submitted as follows: (Revised 9-7-77 PN 586.)
- (i) For subdivision with the preliminary submission of plans and specifications. (Added 9-7-77 PN 586.)
 - (ii) For multiple-family projects, including rural rental housing, labor housing, cooperative housing, technical assistance grants and site development loans with the Form AD-625, "Application for Federal Assistance," or with the letter of application. Subsequent loans or grants extended to the participant will necessitate a new or updated plan. (Revised 11-9-77 PN 595.)
 - (iii) For conditional commitments for five or more individual dwelling units in a 12-month period with the application for the fifth conditional commitment. (Added 9-7-77 PN 586.)
 - (iv) For real estate brokers listing housing properties on an exclusive basis, at the time of execution of Form FmHA 1955-43, "Exclusive Real Property Master Listing Agreement." (Revised 7-8-85, SPECIAL PN.)

(5) Affirmative fair housing marketing plans will cover the following time periods: (Added 9-7-77 PN 586.)

(i) For subdivision, from time of application until all lots are sold. (Added 9-7-77 PN 586.)

(ii) For multiple-family projects from time of application until the loan is paid in full or for so long as the project is being used for the same of a similar purpose for which the funds were extended whichever is later. (Added 9-7-77 PN 586.)

(iii) For conditional commitments involving individual dwelling units, one year or until all units built through conditional commitments issued with that one year period have been sold. (Added 9-7-77 PN 586.)

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing agreement on Form FmHA 1955-43, one year. (Revised 7-8-85, SPECIAL PN.)

(6) Affirmative fair housing marketing plans will be reviewed and approved by the official authorized to approve the assistance requested. The County Supervisor will review and submit with comments to the official authorized to approve the assistance requested, those fair housing marketing plans where the assistance requested exceeds his approval authority. Any participant covered by this section must have an approved affirmative fair housing marketing plan for any assistance approved 90 or more days after the issuance of these regulations. (Added 9-7-77 PN 586.)

(7) Approved affirmative fair housing marketing plans will be made available by the participant for public inspection at the participant's place of business and at each sales or rental office. Participants who fulfill the requirements of this section by filing a Form HUD 935.2 (3-76) will maintain records to reflect their efforts in fulfilling the affirmative fair housing marketing plan. These records will be made available for review by FmHA personnel. (Added 9-7-77 PN 586.)



(8) Applicants failing to comply with these requirements will be liable to sanctions authorized by regulations, rules, or policies governing the program in which they are participating including but not limited to denial of further participation in FmHA programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief. (Added 9-7-77 PN 586.)

(d) Discrimination Compliants.

(1) Compliants against FmHA employees or borrowers under Title VIII of the Civil Rights Act of 1968 received by the County Office will be sent to the State Director. The State Director will forward the compliants to the Administrator, Attention: Equal Opportunity Officer.

(2) Compliants of discrimination against packagers, contractors or others with whom FmHA deals should be filed with the Department of Housing and Urban Development. However, these compliants may be accepted by FmHA employees and routed through the State Director to the Administrator. Attention: Equal Opportunity Officer.

(e) Relations to other regulations. Nothing in this section in any way interferes with the administration of the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 or the "Equal Opportunity in Housing Certification," signed by all packagers.

§1901.204 Compliance reviews.

(a) Recipients subject to reviews. Recipients of the following kinds of loans and/or grants who received their loans or advances of funds on or after January 3, 1965, will be reviewed for compliance in accordance with Title VI of the Civil Rights Act of 1964. Guaranteed loans are not covered by Title VI and, therefore, are not subject to compliance reviews.

- (1) Farm Ownership loans to install or improve recreational facilities or other nonfarm enterprises.
- (2) Operating loans to install or improve recreational facilities or other nonfarm enterprises.
- (3) Economic Opportunity loans to individuals for nonagricultural enterprises.
- (4) Individual Recreation loans.
- (5) Loans for Water and Waste Disposal facilities, including Resource Conservation and Development loans for this purpose.
- (6) Community Facility loans.
- (7) Watershed loans and advances.
- (8) Recreation Association loans including those made from Resource Conservation and Development funds.
- (9) Economic Opportunity loans to incorporated cooperative associations (Compliance reviews on unincorporated Economic Opportunity cooperatives subject to Title VI will be conducted only as the need arises or as directed by either the State Director or the Administrator).
- (10) Grazing Association loans, including Resource Conservation and Development loans for this purpose.
- (11) Loans to Timber Development organizations.
- (12) Rural Renewal loans and advances.
- (13) Rural Rental Housing (formerly Senior Citizen rental) and Rural Cooperative Housing loans.

- (14) Labor Housing loans and/or grants.
- (15) Rural Housing Site loans.
- (16) Business and Industrial Insured loans or grants.
- (17) Technical Assistance grants.
- (18) Development grants for water and waste disposal.

(b) Duration of obligation for conducting reviews. Compliance reviews will be conducted on recipients of loans and grants listed in paragraph (a) of this section:

- (1) Until the loan is paid in full or otherwise satisfied; or
- (2) Until the last advance of funds is made in the case of grants for Technical Assistance, or planning grants if no FmHA loan funds are involved; or
- (3) In the case of development grants for water and waste disposal (no loan involved), for the period during which the real property or structures are used for a purpose for which the grant was extended or for another purpose involving the provisions of similar services or benefits.

(c) Compliance reviews of loans and grants to individuals.

- (1) Compliance Review Officer. The County Supervisor will conduct compliance reviews of loans made to individuals.
- (2) Type of review. If the borrower is currently receiving loan supervision, the County Supervisor may complete the compliance review based on his knowledge of the borrower's operations from other visits. Otherwise, the County Supervisor must visit the borrower's facilities. Before completing the compliance review, the County Supervisor should be aware of:
 - (i) The borrower's operating regulations, for example, the grounds for eviction from a Rural Rental Housing Project.
 - (ii) The borrower's method of advertising the facility to the public, if there is any advertising, including how well these methods reach the minority community.
 - (iii) Any records of request for use of the borrower's facility.

(3) Recording results of review. The County Supervisor's determination that the borrower is or is not in compliance with Title VI, together with information such as that outlined in paragraph (2) of this section, will be recorded in the running record. Review of individual Rural Rental Housing borrowers will be recorded on Form FmHA 400-8, "Compliance Review (Nondiscrimination by Recipients of Financial Assistance Through FmHA.)"

(4) Reporting results of review. If the borrower is in compliance, the County Supervisor will report his findings to the State Director. Exhibit A is a sample report. In the case of Rural Rental Housing borrowers, a copy of Form FmHA 400-8 will be filed in the borrower's County Office loan docket, and the original will be sent to the State director. If the borrower is not in compliance, the borrower's name, location, type of loan involved, and the reasons for the finding of noncompliance will be sent to the State Director.

(5) Forwarding report of noncompliance. The State Director will see that all compliance review reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the compliance review report to the Administrator, Attention: Equal Opportunity Officer, with recommended action to take to bring the recipient into compliance.

(d) Reviews of loans or grants to organizations (any borrower or grantee other than an individual).

(1) Designation of Compliance Review Officer. The State Director will designate the Compliance Review Officer for recipient organizations. County Supervisors may be designated only if they have received approved compliance review training. Otherwise, the Compliance Review Officer must be a member of the State staff.

(2) Type of review. Compliance reviews may be completed in connection with regular supervision visits to organizations and must include an inspection of the FmHA-financed facility. Before determining that the recipient is or is not complying with the provisions in Form FmHA 400-4, the Compliance Review Officer will:

(i) Observe the recipient's records, including records on the present membership by race, the handling of applications for use of the facility, the user rates and membership fees or dues, and the facility's operating regulations.

(ii) Determine if the recipient advertises for members or users. If so, observe the effectiveness of the recipient's methods of advertising the availability of the facility to the public, and especially the effectiveness of this advertising in reaching the minority community.

(iii) Interview organization officials, members, and employees. In reviews of recipients of Technical Assistance grants, members of the self-help housing groups should be interviewed to determine the way in which they were recruited.

(iv) Interview informed local community leaders, including minority leaders, if any, to determine if the facility is operating without discrimination because of race, color, or national origin.

(3) Recording results of reviews.

(i) Association, Watershed, Resource Conservation and Development, and Rural Renewal loans involving recreation facilities. Reviews will be recorded on Form FmHA 400-7, "Compliance Review for Recreational Loans to Associations (FmHA Borrowers)." If the organization is found in compliance with Title VI, the original of the form will be sent to the State Director, and a copy will be filed in the borrower's County Office loan docket. If the organization is found in noncompliance, any additional information which led to the finding will be sent with the form.

(ii) Loans and/or grants for Water and Waste Disposal systems, incorporated Economic Opportunity cooperatives, Grazing associations, Rural Rental Housing, Labor Housing, and Rural Housing Sites. Reviews will be completed on Form FmHA 400-8. The original of the form will be sent to the State Director and a copy filed in the borrower's County Office loan docket. If the organization is found in noncompliance, any additional information which led to the finding will be sent with the form.

(iii) Timber Development organizations, Rural Cooperative Housing loans, and Technical Assistance grants. The information obtained during the compliance review as well as the Compliance Review Officer's determination of the borrower's compliance or noncompliance will be recorded in the running record. If the organization is found in compliance, a report (see Exhibit A) will be sent to the State Director. If the organization is not in compliance, the organization's name, location, type of loan received, and all information which led to the finding will be sent to the State Director.

(4) Mandatory hook-up ordinance. Compliance reviews of public entity borrowers or grantees for water and waste disposal facilities who are operating under the provisions of a mandatory hook-up ordinance will consist of a certification by the borrower or grantee that the ordinance is still in effect and is being enforced.

(5) Forwarding noncompliance report. The State Director will see that the reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the report to the Administrator, Attention: Equal Opportunity Officer, with action proposed to bring the recipient into compliance.

(e) Timing of reviews.

(1) Reporting year. The State Director will schedule Civil Rights compliance reviews from November 1 to October 31 of each year. For example, compliance reviews scheduled during 1976 should be conducted after November 1, 1975, but before October 31, 1976.

(2) Initial reviews.

(i) Water and Waste Disposal loan and/or grant. The initial compliance review will be conducted before loan or grant closing or before the construction begins, whichever occurs first.

(ii) Technical assistance grant. The initial compliance review will be conducted before the grant is closed.

(iii) Rural Housing Site loan. The initial compliance review will be conducted at the beginning of the sale of the sites developed with the FmHA loan.

(iv) Watershed loans for future water supply. The initial compliance review will be made when usage of the stored water begins.

(v) All other loans and/or grants. The initial compliance review of loans and/or grants listed in paragraph (a) of this section will be conducted within the first reporting year after the loan or grant is closed or after Form FmHA 400-4 is signed.

(3) Subsequent reviews. The State Director is responsible for requiring subsequent compliance reviews at intervals not less than 90 days, or more than 3 years, after the previous compliance review.

(i) For Water and Waste Disposal organizations with loans or development grants that have had at least two compliance reviews after loan or grant closing covering a 6-year period, and where no discriminatory practices are indicated, the frequency of subsequent reviews may be reduced to 6 years.

(ii) If Water and Waste Disposal organizations have merged to form a new organization, two reviews will be conducted at 3-year intervals after the merger and one every 6 years thereafter, provided no discriminatory practices are noted.

(f) State Office summary reports. The State Director will keep a list of all compliance reviews conducted during the reporting year so as to schedule each year's reviews. The State Director will submit a copy of this list to the Administrator, Attention: Equal Opportunity Officer, no later than July 31 of each year. Recipients found in noncompliance will also be listed on the summary report. Exhibit B is a sample report. (Revised 8-22-82, PN 34.)

§1901.205 Nondiscrimination in construction financed with FmHA loan or grant.

Executive Order 11246 provides for equal employment opportunity without regard to race, color, religion, sex, or national origin and the elimination of all facilities segregated on the basis of race, color, religion, or national origin on construction work financed by FmHA involving a construction contract of more than \$10,000.

(a) Compliance. This section applies to Federal or Federally assisted construction contracts or subcontracts in excess of \$10,000 for on-site construction. It also applies to invitations for bids published for such construction. If construction work of over \$10,000 is partially financed by another Federal Agency, the County Supervisor will try to reach an agreement as to which agency will administer the nondiscrimination requirements. If unable to reach an agreement, the County Supervisor will refer the case to the State Director. (Revised 12-13-78, PN 652)

(b) Requirements of applicants, contractors, or subcontractors and responsible FmHA officials.

(1) Applicant. The applicant will be required to execute Form FmHA 400-1, "Equal Opportunity Agreement," at the time the loan is closed or before construction is started, whichever occurs first. If the applicant is an incorporated association, a resolution of the governing body will authorize execution of the form. Municipalities or other public bodies will have to incorporate references to this form in the loan resolution before it is adopted. If the applicant wants to publish for bids, the applicant must obtain Form FmHA 424-5, "Invitation for Bid (Construction Contract)," which is in compliance with Executive Order 11246, from the local County Supervisor. (Revised and renumbered 12-13-78, PN 652.)

(2) Contractor or subcontractor.

(i) The prospective contractor or subcontractor must submit Form FmHA 400-6, "Compliance Statement," to the County Supervisor before contract bid negotiations, and comply with the requirements of Executive Order 11246 which are included with Form FmHA 424-6, "Construction Contract," during the performance of the contract. The contract will contain the required "Standard Federal Equal Employment Opportunity Construction Contract Specifications" goals and timetables as set forth in Exhibit D. (Revised 12-13-78, PN 652.)

(ii) The contractor or subcontractor will prepare and submit Form Contract Compliance (CC) 257, "Monthly Employment Utilization Report," to the appropriate regional office of the U.S. Department of Labor USDL (See Exhibit E, List of Regional Offices) on a monthly basis through completion of the contract. (Revised 4-25-79, PN 671.)

(3) The County Supervisor or the responsible FmHA official will:
(Revised 12-13-78, PN 652.)

(i) -Deliver to the contractor the following forms, as appropriate: (Revised 12-13-78, PN 652.)

(A) Form FmHA 400-3, "Notice to Contractors and Applicants," with an attached Equal Employment Opportunity Poster. Posters in Spanish will be provided when appropriate. (Added 12-13-78, PN 652.)

(B) Form FmHA 400-6, and (Added 12-13-78, PN 652.)

(C) Form CC 257. (Revised 4-25-79, PN 671.)

(ii) Deliver to the applicant Form FmHA 424-5 when contractors are to be invited to submit bids, and Form FmHA 424-6 to contract for construction. (Revised 12-13-78, PN 652.)

(iii) Explain to applicant and contractor the requirements of Executive Order 11246, when needed. However, inquiries concerning compliance must be addressed to the appropriate regional offices of the USDL (See Exhibit E). (Revised 4-25-79, PN 671.)

(iv) Submit a report similar in form and content to Exhibit C ("FmHA Financed Contract") of this Instruction to the appropriate regional office of USDL (See Exhibit E) within 10 days of the date a contract or subcontract in excess of \$10,000 is awarded. (Revised 4-25-79, PN 671.)

(c) Contractor with 100 or more employees and contract over \$10,000. Contractors with 100 or more employees and contracts over \$10,000 will file the following with the Joint Reporting Committee, 1800 G Street, N.W., Washington, DC 20006. (Revised and renumbered 12-13-78, PN 652.)

(1) SF-100, "Employer Information Report EEO-1," within 30 days of the contract award unless the report has been submitted within the past 12 months, and (Revised 12-13-78, PN 652.)

(2) An annual report by March 31, so long as the contractor holds any FmHA-financed contract in excess of \$10,000. (Revised 12-13-78, PN 652.)

(d) Contractor with at least 50 employees and contract of \$50,000 or more. Each contractor or subcontractor with at least 50 employees and contract of \$50,000 or more, must develop a written affirmative action compliance program for each project. This must be on file in each contractor's or subcontractor's personnel file within 120 days after the beginning of the contract. Form AD-425 provides guidelines for developing compliance programs. (Renumbered 12-13-78, PN 652.)

(e) Compliance during construction. The County Supervisor will: (Renumbered 12-13-78, PN 652.)

(1) Check to see that:

(i) Required posters are displayed.

(ii) There is no evidence of discrimination in employment. (Revised 12-13-78, PN 652.)

(2) Record findings on Form FmHA 424-12, "Inspection Report."

(3) If there is any evidence of noncompliance, the County Supervisor will report all the facts to the appropriate regional office of USDL (See Exhibit E). (Revised 4-25-79, PN 671.)

(f) Hometown Plans. All construction contracts in excess of \$10,000 financed by FmHA, in areas which have Hometown Plans regarding affirmative action and equal employment, are subject to the conditions set forth in the applicable plan. Each State Director should seek the advice of OGC as to compliance with any such plans in the State Director's jurisdiction. (Revised 12-13-78, PN 652.)

(g) Discrimination complaints. (Renumbered 12-13-78, PN 652.)

(1) Complaints alleging discriminatory acts may be filed directly with the appropriate regional office of the USDL (See Exhibit E) or with the County Supervisor or the State Director for subsequent forwarding to the above address by any employee or applicant for employment with a contractor or subcontractor. (Revised 4-25-79, PN 671.)

(2) Each complaint must be in writing and signed by the complainant (the FmHA official receiving the complaint will assist complainant when necessary). The complaint will include:

(i) Name, address, and telephone number of complainant.

(ii) Name and address of the person allegedly discriminating.

(iii) Date and place of the discrimination.

(iv) Description of the discrimination.

(v) Any other information that will assist in investigating and resolving the complaint.

(3) Complaints must be filed not later than 180 days after the alleged act unless the State Director extends the time, for good cause shown by the complainant.

Attachments: Exhibits A, B, C, D and E

SUBJECT: CIVIL RIGHTS COMPLIANCE REVIEWS

TO: State Director, FmHA

Civil Rights compliance reviews have been conducted, and each recipient listed below was found in compliance with Title VI of the Civil Rights Act of 1964. Information which led to this finding and my determination that the recipient is in compliance are in the running record of the recipient's file.

<u>Recipient</u>	<u>Case Number</u>	<u>*Type of Assistance</u>	<u>Date of Review</u>
<u>Sam H. Smith</u>	<u>99-05-7031</u>	<u>OL (Rec)</u>	<u>January 3, 1975</u>
<u>John A. Jones</u>	<u>99-05-8764</u>	<u>RL</u>	<u>February 17, 1975</u>
<u>Medina Hous. Assoc.</u>	<u>99-05-9176</u>	<u>TA Grant</u>	<u>March 5, 1975</u>

County Supervisor

* Indicate only the loans or grants received which are subject to compliance reviews.

oOo

SUBJECT: Summary Report of Civil Rights
Compliance Reviews

TO: Administrator, FmHA

ATTENTION: Director, Equal Opportunity Staff

- I. Civil Rights Compliance Reviews have been conducted, and the following recipients were found in compliance with Title VI of the Civil Rights Act of 1964.

	<u>Loan Type</u>	<u>Loan Number</u>	<u>Type of Review</u>	
			<u>pre-award*</u>	<u>post award</u>
1.				
2.				
3.				

- II. The following recipients were found in non-compliance:

	<u>Name of Borrower</u>	<u>Loan Type</u>	<u>Loan Number</u>	<u>Type of Review</u>		<u>Date Report of</u>
				<u>pre-award</u>	<u>post award</u>	<u>Noncompliance</u>
						<u>Sent to Nat. Ofc</u>
1.						
2.						
3.						

State Director

*

A pre-award review is a compliance review conducted prior to loan or grant approval.

**

A post-award review is a compliance review conducted after loan closing.

oOo

(8-25-82) PN 845



Exhibit C

FmHA Financed Contract

TO: Director, Office of Federal Contract Compliance Programs
U.S. Department of Labor (DOL)
Washington, D.C. 20210

We submit the following information relative to a construction contract in excess of \$10,000:

1. Contractor's Name: _____
Address: _____
Telephone Number: _____
Employer's Identification Number: _____

2. Contract for: \$ _____
Starting Date: _____ Completion Date: _____
Contract Number: _____ City: _____
DOL Region: _____

o0o

GOALS AND TIMETABLES FOR MINORITIES AND WOMEN

The preamble to regulations establishing a new part 60-4 to 41 CFR chapter 60 published at 41 CFR 14888-14894, April 8, 1978, states that OFCCP contemplates proposing standards and goals for minorities within the very near future. Until that notice has been proposed and final action taken, construction contractors and subcontractors will continue to be subject to the goals and timetables for minority utilization on Federal and federally assisted construction existing now under Executive order 11246. Such goals are published in appendix B.

Now, therefore, based on the foregoing and 41 CFR part 60-4, each contracting agency, each applicant, and each contractor shall include the appropriate goal set forth in appendix A and appendix B in all invitations for bids or other solicitations for federally involved construction contracts in excess of \$10,000. The goals in appendix A hereby are established on a nationwide basis as the standards for female utilization for all trades.

Appendix B established the goals for minority utilization which shall be applicable for the respective areas set forth in appendix B.

Appendix A and Appendix B shall be effective with respect to transactions for which the invitations for bids or other solicitations or amendments thereto are sent on or after May 8, 1978.

WILSON J. ROUGEAU,
Director, OFCCP.

MARCH 28, 1978.

APPENDIX A

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

AREA COVERED

Goals for Women apply nationwide.

GOALS AND TIMETABLES

Timetable	Goals (percent)
From Apr. 1, 1978 until Mar. 31, 1979	3.1
From Apr. 1, 1979 until Mar. 31, 1980	5.1
From Apr. 1, 1980 until Mar. 31, 1981	8.9

APPENDIX B

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally-assist-

(12-13-78) PN 652

ed construction contracts and subcontracts in excess of \$10,000 to be performed in the respective covered areas. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally-assisted construction contract or subcontract.

REGION I

BOSTON, MASS. AREA

Area covered—Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Chelsea, Dedham, Everett, Malden, Medford, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor, Mass.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.	10.8 to 10.12.
	Boilermakers	9.6 to 12.0.
	Bricklayers	8.0 to 10.0.
	Carpenters	11.6 to 14.6.
	Cement masons	25.8 to 27.5.
	Electricians	6.0 to 7.0.
	Elevator constructors.	9.8 to 11.4.
	Glaziers	8.8 to 11.0.
	Ironworkers	5.2 to 6.9.
	Leathers	8.0 to 8.9.
	Operating engineers.	14.1 to 15.0.
	Painters	9.1 to 11.1.
	Pipefitters	11.0 to 12.1.
	Plasterers	20.5 to 22.5.
	Plumbers	9.8 to 11.4.
	Roofers	8.4 to 10.3.
	Sheetmetal workers.	10.1 to 12.1.
	Sprinkler fitters.	12.3 to 15.4.
	All other trades	10.2 to 12.3.

¹Region refers to the 10 regions in which the U.S. Department of Labor has offices. These Regions are headquartered in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle, which are numbers I through X respectively.

STATE OF RHODE ISLAND AREA

Area Covered—Statewide.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	5.0.

REGION II

BUFFALO, N.Y. AREA

Area Covered—Erie County and Buffalo, N.Y.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	10.6 to 13.2.

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CAMDEN, N.J. AREA

Area Covered: Camden, N.J., area of Camden, Salem, and Gloucester Counties.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.	11.9 to 14.5.
	Boilermakers	10.5 to 13.5.
	Bricklayers	17.8 to 20.0.
	Carpenters	11.2 to 13.0.
	Cement masons	12.0 to 13.0.
	Electricians	14.9 to 17.8.
	Elevator constructors.	10.8 to 13.5.
	Glaziers	14.0 to 20.0.
	Leathers	10.8 to 13.3.
	Operating Engineers.	10.0 to 12.8.
	Painters/Decorators/Paperhangers.	8.8 to 12.2.
	Plasterers	17.0 to 19.0.
	Plumbers/Pipefitters/Steamfitters.	8.4 to 10.5.
	Roofers	11.2 to 14.0.
	Sheetmetal Workers.	10.2 to 11.1.
	Sprinkler Fitters.	12.9 to 11.1.
	Structural Metal Workers.	10.3 to 13.3.
	Wharf & Deck Builders.	

ELMIRA, N.Y. AREA

Area Covered: Chemung, Steuben, Schuyler, Tioga, and Yates Counties, N.Y.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	4.0 to 5.0.

LONG ISLAND, N.Y. AREA

Area Covered: Nassau and Suffolk Counties, N.Y.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	5.0 to 8.0.

WESTCHESTER, N.Y. AREA

Area covered—Westchester County, N.Y.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	11 to 13.

REGION III

STATE OF DELAWARE AREA

Area covered—State of Delaware.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	11 to 13.

PHILADELPHIA, PA., AREA

Area covered—Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Ironworkers	22 to 28.
	Plumbers and pipefitters	20 to 24.
	Steamfitters	20 to 24.
	Sheetmetal workers	19 to 23.
	Electrical workers	19 to 23.
	Elevator construction workers	19 to 23.

PITTSBURGH, PA., AREA

Area covered—Allegheny County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers	24.3 to 27.8.
	Boilermakers	33.8 to 37.7.
	Bricklayers	11.9 to 13.0.
	Carpenters	11.6 to 12.9.
	Cement masons	18.3 to 18.1.
	Electricians	17.0 to 20.3.
	Glassers	28.9 to 30.4.
	Ironworkers	23.5 to 29.9.
	Lathers	12.7 to 13.8.
	Operating engineers	44.2 to 48.3.
	Painters	16.4 to 17.9.
	Plasterers	34.3 to 38.0.
	Plumbers	7.8 to 9.2.
	Roofers	47.1 to 50.1.
	Sheetmetal workers	28.0 to 28.9.
	Steamfitters	10.1 to 12.9.
	Tile setters	13.6 to 16.0.
	All other	27.5 to 31.5.

WASHINGTON, D.C. AREA

Area Covered—District of Columbia; the Virginia cities of Alexandria, Fairfax, and Falls Church; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Maryland counties of Montgomery and Prince Georges.

GOALS AND TIMETABLES

Timetables	Trade	Goal (percent)
Until further notice.	Electricians	28.0 to 34.0.
	Painters and paperhangers	35.0 to 42.0.
	Plumbers, pipefitters and steamfitters	25.0 to 30.0.
Until further notice.	Iron workers	38.0 to 43.0.
	Sheetmetal workers	25.0 to 31.0.
	Elevator constructors	34.0 to 40.0.
	Asbestos workers	28.0 to 32.0.
	Lathers	34.0 to 40.0.

GOALS AND TIMETABLES—Continued

Timetables	Trade	Goal (percent)
	Boilermakers	34.0 to 30.0.
	Tile and terrazzo workers	28.0 to 34.0.
	Glassers	28.0 to 34.0.

REGION IV

ATLANTA, GEORGIA AREA

Area Covered—Atlanta, Ga., Standard Metropolitan Statistical Area which includes Fulton, DeKalb, Cobb, Clayton and Gwinnett Counties.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers	8.6 to 10.3.
	Bricklayers	16.3 to 18.2.
	Carpenters	11.0 to 13.8.
	Electricians	10.9 to 12.2.
	Glassers	10.2 to 12.2.
	Ironworkers	14.0 to 16.0.
	Metal Lathers	10.0 to 12.0.
	Painters	10.3 to 12.0.
	Plumbers	9.4 to 10.9.
	Pipefitters	9.4 to 10.9.
	Plasterers	24.4 to 25.8.
	Roofers	18.0 to 20.0.
	Sheetmetal	9.5 to 11.3.
	Sprinkler fitters	8.3 to 9.8.
	Operating engineers	24.0 to 27.7.
	Elevator installers	9.6 to 11.5.

BIRMINGHAM, ALA. AREA

Area covered—Jefferson, Shelby, and Walker Counties, Ala.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	20 to 24.

CHARLOTTE, N.C. AREA

Area covered—Mecklenburg and Union Counties, N.C.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	24 to 30.

JACKSONVILLE, FLA. AREA

Area covered—Duval County, Fla.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	20 to 23.

LOUISVILLE, KY. AREA

Area covered—Adair, Barten, Bullitt, Carroll, Edmundson, Grayson, Green, Hardin, Hart, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, Taylor, Trimble, Warren, Washington Counties, Kentucky; and Clark, Floyd, and Harrison Counties, Ind.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	12.0 to 16.0.

MIAMI, FLA., AREA

Area covered—Dade County, Fla.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	20.0 to 40.0.

NASHVILLE, TENN., AREA

Area covered—City of Nashville, Tenn.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	16.0 to 20.0.

REGION V

AKRON, OHIO, AREA

Area covered—Summit, Portage and Medina Counties, Ohio.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	10.0 to 12.5.

CANTON, OHIO, AREA

Area covered—Carroll, Holmes, Stark, Tuscarawas, and Wayne Counties, Ohio.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	7.0 to 8.4.

CHICAGO, ILL., AREA

Area covered—Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.	08.6 to 10.3
	Bricklayers.	18.3 to 8.2.
	Carpenters.	11.9 to 12.2.
	Electricians.	10.9 to 12.2.
	Elevator	08.6 to 11.5.
	Installers.	
	Glaziers.	10.2 to 12.2.
	Ironworkers.	14.0 to 16.0.
	Metal lathers.	10.0 to 12.0.
	Painters.	10.3 to 12.1.
	Plumbers.	09.4 to 10.9.
	Pipe fitters.	09.4 to 10.9.
	Plasterers.	24.4 to 25.2.
	Roofers.	18.0 to 20.0.
	Sheetmetal	09.5 to 11.3.
	workers.	
	Sprinkler fitters.	08.3 to 09.9.
	Operating	15.7 and
	engineers.	above.

CINCINNATI, OHIO, AREA

Area covered.—Ohio counties of Clermont, Hamilton, and Warren and in the Kentucky counties of Boone, Campbell, and Kenton, and in the Indiana county of Dearborn.

GOALS AND TIMETABLES

Timetable	Trade	Goals (percent)
Until further notice.	Asbestos workers.	09.3 to 12.2.
	Boilermakers.	08.0 to 08.4.
	Carpenters.	09.0 to 10.7.
	Elevator	10.2 to 12.7.
	constructors.	
	Engineers	28.9 to 28.4.
	(stationary).	
	Floor layers.	09.0 to 10.5.
	Glaziers.	09.1 to 11.1.
	Lathers.	09.3 to 10.6.
	Martle, tile and	08.3 to 09.9.
	terrazzo	
	workers and	
	helpers.	
	Millwrights.	09.1 to 10.3.
	Painters.	11.0 to 13.5.
	Pipefitters.	10.0 to 12.0.
	Plasterers.	08.7 to 08.6.
	Plumbers.	10.0 to 12.7.
	Sheetmetal	10.1 to 11.3.
	workers.	
	All other.	11.0 to 11.8.

CLEVELAND, OHIO, AREA

Area covered.—Ashland, Ashtabula, Crawford, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain, Sandusky, and Seneca Counties, Ohio.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Art glass workers.	23.4 to 28.6.
	Asbestos workers.	20.9 to 23.9.
	Boilermakers.	16.3 to 18.9.
	Bricklayers.	23.6 to 29.5.
	Carpenters.	08.0 to 08.6.
	Cement masons.	41.1 to 42.2.
	Electricians.	15.1 to 18.1.
	Elevator	28.9 to 32.6.
	constructors.	
	Glaziers.	35.8 to 40.0.
	Ironworkers.	11.4 to 13.2.
	Painters.	17.7 to 18.4.
	Pipefitters.	15.7 to 17.9.
	Plasterers.	21.6 to 23.2.
	Plumbers.	20.8 to 22.4.
	Roofers.	28.9 to 31.8.

GOALS AND TIMETABLES—Continued

Timetable	Trade	Goal (percent)
	All other.	17.0 to 18.8.
DAYTON, OHIO, AREA		
Area covered.—Greene, Miami, Montgomery, and Preble Counties, Ohio.		

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All.	10.6 to 11.2.

DETROIT, MICH., AREA

Area covered.—Wayne, Oakland, and Macomb Counties, Mich.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Electricians.	17.0 to 19.0.
	Operating	16.9 to 18.0.
	engineers.	
	Lathers.	18.6 to 19.6.
	Painters.	15.0 to 17.7.
	Riggers.	16.8 to 17.7.
	Roofers.	15.3 to 16.6.
	Tile, terrazzo	15.0 to 17.3.
	marble workers.	
	Tile and marble	16.0 to 18.3.
	helpers.	
	Terrazzo helpers.	17.8 to 19.5.
	All other.	18.6 to 20.4.

EVANSVILLE, IND., AREA

Area covered.—Vanderburgh County, Ind.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All.	6.3 to 7.6.

FORT WAYNE, IND., AREA

Area covered.—Adams, Allen, DeKalb, Huntington, LaGrange, Noble, Steuben, Wells, and Whitley Counties, Ind.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Plumbers.	05.2 to 08.5.
	Steamfitters.	05.2 to 05.5.
	Carpenters.	08.7 to 08.2.
	Bricklayers.	09.3 to 10.4.
	Electricians.	05.2 to 06.9.
	Sheetmetal.	04.4 to 05.2.
	Ironworkers.	07.3 to 08.4.
	Operating	05.2 to 06.0.
	engineers.	
	Painters.	11.0 to 12.0.
	All other.	07.1 to 08.0.

INDIANAPOLIS, IND., AREA

Area covered.—Marion County, Ind.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.	32.2 to 37.7.
	Bricklayers.	17.4 to 19.5.
	Electricians.	06.6 to 07.8.
	Elevator	15.5 to 18.0.
	constructors.	
	Glaziers.	25.2 to 28.6.
	Ironworkers.	11.6 to 14.0.
	Lathers.	21.1 to 22.0.
	Operating	07.7 to 08.8.
	engineers.	
	Painters.	22.4 to 25.0.
	Plasterers.	27.5 to 30.4.
	Plumbers.	28.5 to 30.0.
	Roofers.	15.9 to 18.1.
	Sheetmetal	09.3 to 10.9.
	workers.	
	Steamfitters.	14.9 to 17.1.
	All other.	14.1 to 16.2.

PEORIA, ILL., AREA

Area covered.—Peoria, Fulton, Tazewell, Woodford, Knox Stark, Marshall, Hancock, Mason, McLean, McDonough, Henderson, Warren, Livingston, Bureau, Henry, and Putnam Counties, Ill.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All.	5.0 to 6.0.

ROCKFORD, ILL., AREA

Area covered.—Boone, Winnebago, Stephenson, De Kalb, Ogle, Lee, and Jo Daviess Counties; Cherry Grove, Shannon, Rock Creek, Lima, Wysox, and Elkhorn Townships in Carroll County; Geneseo, Jordan, Hopkins, Sterling, Hume, Montmorency, Tampico, and Rahmanan Townships in Whiteside County, Ill.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All.	10.0 to 12.0.

SOUTH BEND, IND., AREA

Area Covered.—St. Joseph, County, Ind.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All.	8.0 to 10.0.

TOLEDO, OHIO, AREA

Area covered.—Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Williams, and Wood Counties, Ohio.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	10.7 to 12.3.

YOUNGSTOWN, OHIO, AREA

Area Covered.—Columbiana, Mahoning, and Trumbull Counties, Ohio; and Lawrence and Mercer Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	8.0 to 7.1

REGION VI

EL PASO, TEX., AREA

Area covered—El Paso County, Tex.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	58.1 to 66.2

LAWTON, OKLA., AREA

Area covered—Comanche County, Okla.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	15.8 to 16.8

LITTLE ROCK, ARK., AREA

Area covered—Pulaski County, Ark.

GOALS AND TIMETABLES:

Timetable	Trade	Goal (percent)
Until further notice.	All	25.6 to 30.6

NEW ORLEANS, LA.

Area covered—Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles, St. John, Lafourche, Plaquemines, Washington, Terrebonne, Tangipahoa, ' Livingston, ' and St. James. '

'Area covered is east of the Illinois Central R.R.

'Area covered is southeast of the line from a point off the Livingston and Tangipahoa Parish line adjacent from New Orleans and Baton Rouge.

'Area covered is southeast of a line drawn from the town of Gramercy to the point of intersection of St. James, Lafourche, and Assumption Parishes.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	20 to 23.

TULSA, OKLA.

Area covered—Tulsa, Creek, Mayes, Rogers, Okfuskee, Washington, Nowata, Craig, Ottawa, Delaware, Okmulgee (northern half), dividing line Highway 16; Osage (eastern half), dividing line Highway 18; Pawnee (eastern half), and Payne (eastern half) Counties, Okla.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Bricklayers.....	24.0 to 25.0.
	Carpenters.....	17.0 to 18.0.
	Cement masons.....	21.5 to 22.5.
	Floor covers.....	12.0 to 14.0.
	Glassers, glass workers.....	14.7 to 17.3.
	Operating engineers.....	22.0 to 24.0.
	Painters.....	18.0 to 20.0.
	Pipefitters.....	10.0 to 12.0.
	Plumbers.....	11.6 to 13.2.
	Roofers.....	12.0 to 14.0.
	Sheetmetal workers.....	08.0 to 10.0.
	All other trades.....	12.0 to 14.4.

REGION VII

KANSAS CITY (KANS.) AND (MO.)

Area covered—Clay, Platte, Jackson, Bates, Carroll, Lafayette, Ray, Johnson, Henry, and Cass Counties, Mo., and Wyandotte, Johnson, and Miami Counties, Kans.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.....	10.3 to 11.7.
	Boilermakers.....	05.9 to 06.4.
	Bricklayers.....	19.4 to 20.7.
	Carpenters.....	05.9 to 06.9.
	Carpet, linoleum and resilient floor decorators.....	06.5 to 06.4.
	Cement masons.....	25.5 to 26.5.
	Elevator constructors.....	09.2 to 10.7.
	Electricians.....	09.0 to 09.4.
	Glassers.....	09.4 to 10.5.
	Lathers.....	14.5 to 15.6.
	Marble masons, tile layers and terrazzo workers.....	07.5 to 09.0.
	Marble and tile helpers.....	04.8 to 05.6.
	Operating engineers.....	09.0 to 10.8.
	Painters.....	14.3 to 15.0.
	Pipefitters.....	06.9 to 07.7.
	Plasterers.....	19.0 to 20.4.
	Plumbers.....	08.3 to 09.3.
	Roofers.....	14.0 to 15.0.
	Sheetmetal workers.....	07.0 to 08.0.
	Teamsters.....	25.0 to 26.0.
	All other trades.....	11.4 to 12.5.

OMAHA, NEBR.

Area covered—Sharpy and Douglas Counties, Nebr., Council Bluffs, Iowa (city limits only).

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	9.0 to 10.0

ST. LOUIS, MO.

Area covered—City of St. Louis, Mo., and St. Louis County, Mo.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.....	08.2 to 08.7.
	Boilermakers.....	34.0 to 37.7.
	Bricklayers.....	12.6 to 14.2.
	Carpenters.....	08.2 to 08.9.
	Cement and concrete finishers.....	13.3 to 16.6.
	Electricians.....	13.6 to 16.1.
	Elevator constructors.....	08.7 to 09.3.
	Glassers.....	28.7 to 34.5.
	Ironworkers.....	09.0 to 10.4.
	Lathers and plasterers.....	24.2 to 29.7.
	Operating engineers.....	13.2 to 15.7.
	Painters and paperhangers.....	25.1 to 29.3.
	Plumbers and pipefitters.....	13.2 to 15.4.
	Roofers and slaters.....	17.1 to 19.6.
	Sheetmetal workers.....	22.5 to 27.0.
	Tilesetters and terrazzo workers.....	08.8 to 10.4.

TOPEKA, KANS.

Area covered.—Shawnee County, Kans.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	08.8 to 10.5.

REGION VIII

COLORADO

Area covered—State of Colorado.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	13 to 14.

REGION IX

ALAMEDA COUNTY, CALIF., AREA

Area covered.—Alameda County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	25.5 to 32.0.

ARIZONA

Area covered—State of Arizona.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	25.0-30.0

COSTA COSTA COUNTY, CALIF.

Area covered: Contra Costa County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	17.0 to 19.5.

FRESNO COUNTY, CALIF.

Area covered.—Fresno, Madera, Kings, and Tulare Counties, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	20.0 to 27.0.

LAS VEGAS, NEV.

Area covered.—Area of jurisdiction of the Building & Construction Trades Council of Clark, Lincoln, Nye and Esmeralda Counties, Nev.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.....	17.7 to 20.2.
	Bricklayers.....	18.8 to 21.3.
	Carpenters.....	16.3 to 17.5.
	Glassers.....	16.3 to 17.7.
	floorcoverers, painters, tapers and wallcoverers.....	
	Plasterers.....	24.6 to 27.2.
	Plumbers and pipefitters.....	18.2 to 16.2.
	Sheet metal workers.....	16.2 to 17.7.
	Wood, wire and metal lathers.....	18.1 to 19.3.
	All other trades.....	18.0 to 19.5.

LOS ANGELES COUNTY, CALIF.

Area covered.—Area of jurisdiction of the Los Angeles Building & Construction Trades Council.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	21.7 to 23.1

MONTEREY, CALIF.

Area covered.—Monterey County, Calif., and within the jurisdiction of the Monterey County Building & Construction Trades Council, AFL-CIO.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	37.0 to 39.5.

NORTH BAY, CALIF.

Area covered.—Solano, Napa, Lake, Marin, Mendocino, and Sonoma Counties.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	10.6 to 12.6.

SACRAMENTO, CALIF.

Area covered.—Sacramento, Yolo, Amador, Placer, El Dorado, Nevada, and Sierra Counties, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	17.5 to 20.0.

SAN DIEGO COUNTY, CALIF.

Area covered.—San Diego County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	24.0 to 30.0.

SAN FRANCISCO CITY AND COUNTY, CALIF.

Area covered.—City and County of San Francisco, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Electricians.....	17.0.
	Plumbers, pipefitters and steamfitters.....	14.0.
	Structural metal workers.....	20.0.
	Sheet metal workers.....	19.0.

GOALS AND TIMETABLES—Continued

Timetable	Trade	Goal (percent)
	Asbestos Workers.....	40.0.

SAN MATEO COUNTY, CALIF.

Area covered—San Mateo County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	12.0 to 14.0.

SANTA CLARA COUNTY, CALIF.

Area covered—Santa Clara County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	18.0 to 21.7.

SANTA CRUZ COUNTY, CALIF.

Area Covered—Santa Cruz County, Calif.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	17.0 to 20.4.

REGION X

ALASKA

Area covered—State of Alaska.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Asbestos workers.....	26.4 to 28.0.
	Carpenters.....	25.7 to 28.0.
	Electricians.....	25.7 to 28.0.
	Ironworkers.....	25.7 to 28.0.
	Operating engineers.....	28.1 to 28.0.
	Painters.....	25.8 to 28.0.
	Pile drivers.....	25.1 to 28.0.
	Plumbers and steamfitters.....	28.4 to 28.0.
	Roofers.....	27.8 to 28.0.
	Sheetmetal workers.....	23.6 to 28.0.
	Teamsters.....	23.6 to 28.0.
	All other.....	28.1 to 28.1.

PASCO, WASH.

Area covered—The area of jurisdiction of the Southeastern Washington Building & Construction Trades Council as follows: all of Benton, Franklin, and Walla Walla Counties, Grant County to Highway 2 and the southwest corner of Adams County, Wash.

FmHA Instruction 1901-E
Exhibit-D

SPOKANE, WASH. Page-6

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Boilermakers	12.5 to 15.0
	Bricklayers	11.0 to 12.5
	Carpenters	09.5 to 12.5
	Cement finishers	11.5 to 14.0
	Electricians	10.0 to 12.5
	Ironworkers	10.0 to 12.5
	Operating engineers	10.2 to 12.7
	Painters	10.0 to 12.5
	Plumbers and fitters	09.5 to 12.4
	Sheetmetal workers	10.5 to 13.5
	Laborers	09.5 to 12.0
	All other	10.0 to 12.5

PORTLAND, OREG.

Area covered—Multnomah, Clackamas, and Washington Counties, Oreg.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	5.5 to 6.5

SEATTLE, WASH.

Area covered—King County, Wash.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	8.5 to 11.5

Area covered—Washington Counties: Spokane, Whitman, Lincoln, Adams, Stevens, Pend Oreille, Columbia, Garfield, Asotin, Ferry, Okanogan, Chelan, Douglas and Grant (north of Highway 2), and in connection with Indian employment, parts of any other counties included in reservations incorporating portions of the above area; Idaho: Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nes Perce, Lewis, and Idaho, and in connection with Indian employment, any other territory included in reservations, part of which are in the above counties.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	2.0 and above.

TACOMA, WASH.

Area covered—Pierce, Thurston, Mason, Lewis, Grays Harbor, and Pacific Counties, Wash.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	All	12.5 to 15.0

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LIST OF REGIONAL OFFICES
Office of Federal Contract Compliance Programs (OFCCP)
U.S. Department of Labor (USDOL)

REGION I (ME, NH, VT, MA, RI, CT)

Associate Regional Administrator
USDOL/OFCCP
JFK Building - Room 1612-C
Government Center
Boston, MA 12203
(617) 223-4232

REGION II (NY, NJ, PR, VI)

Associate Regional Administrator
USDOL/OFCCP
1515 Broadway - Room 3306
New York, NY 10036
(212) 662-5563

REGION III (PA, MD, DE, VA, WV, DC)

Associate Regional Administrator
USDOL/OFCCP
Gateway Building - Room 15434
3535 Market Street
Philadelphia, PA 19104
(215) 596-1213

REGION IV (NC, SC, KY, TN, MS, AL
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1371 Peachtree Street, NE
Room 729
Atlanta, GA 30309
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New Federal Building, 16th Floor
234 O South Dearborn Street
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(312) 353-8887

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555 Griffin Square Building
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Associate Regional Administrator
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Federal Office Building
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Kansas City, MO 64106
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USDOL/OFCCP
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AGENDA

GENERAL

ECOA

TITLE VIII (FAIR HOUSING)

TITLE VI

COMPLIANCE REVIEWS

SEC. 504 (HANDICAP)

FmHA INSTRUCTION 1901-E